CONSTITUTION OF THE MARITIME SAFETY COMMITTEE OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION*

COMPOSITION DU COMITÉ DE LA SÉCURITÉ MARITIME DE L'ORGANISATION INTERGOUVERNEMENTALE CONSULTATIVE DE LA NAVIGATION MARITIME*

* *Note by the Registry.*—Any references to a text which was issued in a provisional edition for the use of the Court have been replaced by references to the pages in the present definitive edition.

* *Note du Greffe.* — Les renvois à un texte ayant fait l'objet d'une édition provisoire à l'usage de la Cour ont été remplacés par des renvois aux pages de la présente édition définitive.

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1. LETTRE DE L'AMBASSADEUR DE BELGIQUE AUX PAYS-BAS AU GREFFIER DE LA COUR

La Haye, le 19 novembre 1959.

Monsieur le Greffier,

J'ai l'honneur de me référer à votre lettre du 5 août 1959, n° 30095, par laquelle vous me demandez d'être fixé, avant le 5 décembre 1959, sur l'intention éventuelle du Gouvernement belge de déposer un mémorandum devant la Cour internationale de Justice, précisant son attitude au sujet de l'avis consultatif demandé à la Cour à propos de la composition du Comité de la Sécurité maritime au sein de l'I. M. C. O.

Mon Gouvernement vient de me faire savoir qu'il n'envisage pas le dépôt d'un mémorandum de ce genre, car les grands pays maritimes faisant connaître individuellement leur argumentation qui concorde avec le point de vue belge, la désignation d'un avocat exposant la thèse belge serait superflue.

Je vous prie d'agréer, etc.

(Signé) F. X. VAN DER STRATEN-WAILLET.

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[1] These statements are printed in the chronological order in which they were filed. — Les présents exposés sont reproduits suivant l'ordre chronologique de leur dépôt au Greffe.

2. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE

La Cour a été saisie, le 25 mars 1959, d'une requête pour avis consultatif émanant de l'Assemblée de l'Organisation intergouvernementale consultative de la navigation maritime ainsi conçu: « Le Comité de la sécurité maritime de l'Organisation intergouvernementale consultative de la navigation maritime, élu le 15 janvier 1959, a-t-il été établi conformément à la Convention portant création de l'Organisation? »

La résolution adoptée par l'Assemblée de l'Organisation (qui sera ainsi nommée dans cet exposé) le 19 janvier 1959, annexée à la requête, précise que « l'interprétation du paragraphe *a)* de l'article 28 de la Convention a donné lieu à des divergences d'opinion »; on rappellera donc les termes de cet article:

> *Article 28. a)* Le Comité de la sécurité maritime se compose de quatorze Membres élus par l'Assemblée parmi les Membres, gouvernements des pays qui ont un intérêt important dans les questions de sécurité maritime. Huit au moins de ces pays doivent être ceux qui possèdent les flottes de commerce les plus importantes; l'élection des autres doit assurer une représentation adéquate d'une part aux Membres, gouvernements des autres pays qui ont un intérêt important dans les questions de sécurité maritime, tels que les pays dont les ressortissants entrent, en grand nombre, dans la composition des équipages ou qui sont intéressés au transport d'un grand nombre de passagers de cabine et de pont et, d'autre part, aux principales régions géographiques.
>
> *b)* Les Membres du Comité de la sécurité maritime sont élus pour une période de quatre ans et sont rééligibles. »

Les éléments de la question posée à la Cour étant ainsi réunis, les présentes observations seront limitées à l'exposé de quelques considérations d'ordre général auxquelles le Gouvernement de la République française, qui a, dès l'origine, marqué un vif intérêt pour l'Organisation, attache de l'importance.

D'après l'article 12 de la Convention, le Comité de la sécurité maritime est l'un des organes essentiels de l'Organisation, à côté de l'Assemblée et du Conseil. Tous les États sont membres de l'Assemblée (article 13), mais il est utile d'indiquer comment sont désignés les membres du Conseil, selon les articles 17 et 18 de la Convention.

> « *Article 17.* Le Conseil comprend seize Membres, répartis comme suit:
>
> *a)* six sont les gouvernements des pays qui sont le plus intéressés à fournir des services internationaux de navigation maritime;
>
> *b)* six sont les gouvernements d'autres pays qui sont le plus intéressés dans le commerce international maritime;

c) deux sont élus par l'Assemblée parmi les gouvernements des pays qui ont un intérêt notable à fournir des services internationaux de navigation maritime;

d) et deux sont élus par l'Assemblée parmi les gouvernements d'autres pays qui ont un intérêt notable dans le commerce international maritime.

En application des principes énoncés dans le présent article, le premier Conseil sera composé comme prévu à l'annexe I de la présente Convention.

Article 18. Sauf dans le cas prévu à l'annexe I à la présente Convention, le Conseil détermine, aux fins d'application de l'alinéa *a)* de l'article 17, les Membres, gouvernements des pays qui sont le plus intéressés à fournir des services internationaux de navigation maritime; il détermine également, aux fins d'application de l'alinéa *c)* de l'article 17, les Membres, gouvernements des pays qui ont un intérêt notable à fournir de tels services. Ces déterminations sont faites à la majorité des voix du Conseil, celle-ci devant comprendre la majorité des voix des Membres représentés au Conseil en vertu des alinéas *a)* et *c)* de l'article 17. Le Conseil détermine ensuite, aux fins d'application de l'alinéa *b)* de l'article 17, les Membres, gouvernements des pays qui sont le plus intéressés dans le commerce maritime international. Chaque Conseil établit ces déterminations dans un délai raisonnable avant chacune des sessions ordinaires de l'Assemblée. »

Le problème qui se pose est donc de déterminer quelles sont les règles adoptées par l'Organisation pour la désignation des membres de l'un des organes de cette institution. Problème juridique par nature, comme l'a dit la Cour dans son avis consultatif du 28 mai 1948 relatif aux conditions de l'admission d'un État comme membre des Nations Unies (article 4 de la Charte) (*Recueil des Arrêts, Avis consultatifs et Ordonnances*, p. 61), puis dans son avis consultatif du 3 mars 1950 sur la compétence de l'Assemblée générale pour l'admission d'un État aux Nations Unies (même Recueil, pp. 6-7). C'est en s'inspirant des considérations développées au cours de ces deux questions que le Gouvernement de la République française présentera ses observations dans la présente affaire. Il s'agit d'interpréter un texte de constitution d'une organisation internationale, de remplir donc une fonction essentiellement judiciaire, pour déterminer l'étendue des pouvoirs d'un organe de cette institution, sans qu'il soit nécessaire de s'arrêter aux mobiles, ni aux cas concrets qui peuvent se trouver mis en cause. A-t-on bien appliqué un texte de constitution est une question qui doit être tranchée « sous l'esprit abstrait qui lui a été donné » (avis du 28 mai 1948, p. 61). La désignation des membres du Comité de la sécurité maritime a-t-elle été faite en violation d'une règle quelconque de la Charte de l'Organisation? Ce problème sera examiné en recherchant d'abord quelles sont ces règles d'après la Convention, ensuite en se référant aux règles correspondantes d'autres Organisations internationales, afin de replacer l'affaire dans le contexte général des pouvoirs reconnus

par les chartes constitutives pour la désignation des organes principaux.

I. — Examen de la Convention relative à la création d'une Organisation maritime consultative intergouvernementale, faite à Genève le 6 mars 1948 (Nations Unies, *Recueil des Traités*, 1958, vol. 289, pp. 49 et suivantes).

L'article 28 qui fait l'objet de la requête pour avis consultatif remet à l'Assemblée l'élection des 14 membres du Comité de la sécurité maritime *parmi les membres, gouvernements des pays qui ont un intérêt important dans les questions de sécurité maritime*. C'est là une condition juridique de portée générale et qui doit être prise en considération en premier lieu.

Condition de portée générale énoncée dans le début de l'article, qui n'est d'ailleurs qu'une conséquence de la volonté de création du Comité. C'est presque un tautologisme que dire: les membres du Comité de la sécurité maritime doivent avoir un intérêt important dans les questions que traitera le Comité, i. e., la sécurité maritime. Mais puisque cette répétition a été voulue, il faut lui donner sa valeur et constater que la compétence en matière de sécurité maritime est la condition juridique que doivent remplir tous les États qui souhaitent entrer dans ce Comité et que la constitution de l'Organisation fait de cette compétence une qualité nécessaire pour l'élection au Comité. C'est une disposition analogue à celle que contient l'article 4 de la Charte des Nations Unies, paragraphe 1, qui détermine les conditions à remplir pour devenir membre des Nations Unies. Des indications du même ordre se trouvent dans tous les actes créant des institutions internationales; s'agissant d'une organisation maritime, il est donc normal de prévoir que, pour pouvoir être élu membre du Comité, il faut avoir un intérêt important en matière de sécurité maritime.

Le sens des mots intérêt important en matière de sécurité maritime est éclairé par la définition du contenu de la notion de sécurité maritime qui se trouve dans l'article 29, immédiatement après l'article qui crée le Comité.

> « *Article 29. a)* Le Comité de la sécurité maritime doit examiner toutes les questions qui relèvent de la compétence de l'Organisation, telles que les aides à la navigation maritime, la construction et l'équipement des navires, les questions d'équipage dans la mesure où elles intéressent la sécurité, les règlements destinés à prévenir les abordages, la manipulation des cargaisons dangereuses, la réglementation de la sécurité en mer, les renseignements hydrographiques, les journaux de bord et les documents intéressant la navigation maritime, les enquêtes sur les accidents en mer, le sauvetage des biens et des personnes ainsi que toutes autres questions ayant un rapport direct avec la sécurité maritime.
>
> *b)* Le Comité de la sécurité maritime prend toutes les mesures nécessaires pour mener à bien les missions que lui assigne la Convention ou l'Assemblée ou qui pourront lui être confiées dans le

cadre du présent article par tout autre instrument intergouvernemental.

c) Compte tenu des dispositions de la XII^me^ Partie, le Comité de la sécurité maritime doit maintenir des rapports étroits avec les autres organismes intergouvernementaux qui s'occupent de transports et de communications, susceptibles d'aider l'Organisation à atteindre son but en augmentant la sécurité en mer et en facilitant, du point de vue de la sécurité et du sauvetage, la coordination des activités dans les domaines de la navigation maritime, de l'aviation, des télécommunications et de la météorologie. »

L'article est parfaitement clair, et il est inutile de le paraphraser, car il décrit bien l'ensemble des problèmes dans lesquels, pour être élu au Comité institué dans l'article précédent, il sera nécessaire de montrer qu'on a un intérêt important. Le pouvoir d'élire donné par la Convention à l'Assemblée est donc le pouvoir de désigner parmi tous les États qui peuvent établir l'importance de leur intérêt à résoudre ou, au moins, à traiter, les problèmes énumérés à l'article 29, quatorze membres du Comité.

L'affaire serait donc des plus simples si l'article 28 s'arrêtait à la seule condition de candidature fondée sur l'intérêt important. Mais la suite de l'article, dans les précisions qu'il apporte sur la condition primordiale, porte: 8 pays doivent posséder les flottes de commerce les plus importantes, les autres doivent représenter de façon adéquate les autres pays qui, de la manière indiquée dans l'article, peuvent manifester un intérêt important à la sécurité maritime, et il faut enfin tenir compte de la répartition géographique.

Ces expressions de l'article 28 paraissent rentrer dans la catégorie connue des conditions d'admission à un statut juridique déterminé, la décision d'attribution de ce statut par l'organe compétent ne pouvant être prise que si ces conditions sont remplies. Sans doute, en l'espèce, les conditions de possession d'un intérêt important peuvent-elles apparaître au laïc comme difficiles à établir mais, dans le milieu spécialisé où elles trouvent leur application, les critères visés au texte sont connus ou vérifiables par des institutions dont la connaissance de ces éléments est l'une des raisons d'être. Bien que cela ne soit pas nécessaire pour la solution juridique du problème abstrait, seul posé à la Cour, indiquons à titre d'exemple que les questions maritimes ont été l'objet de conventions internationales nombreuses auxquelles tout État qui a un intérêt important dans la sécurité maritime n'a pu rester étranger (cf. l'état des ratifications des conventions maritimes au 1^er^ août 1957, dans le Rapport du Directeur général à la 41^me^ session de la Conférence internationale du travail, 1958, Rapport I, Annexe I, pp. 62-63; cf. aussi « Règles internationales pour prévenir les abordages en mer approuvées par la Conférence internationale du 10 juin 1948 pour la sauvegarde de la vie humaine en mer », *Recueil des Traités*, Nations Unies, vol. 191, 1954, p. 21). Mais, de toute manière, le problème juridique n'est pas de contrôler si tel État a, ou n'a pas, un intérêt important

en matière de sécurité maritime, possède ou non une flotte de commerce parmi les plus importantes, a des ressortissants en grand nombre dans les équipages, ou est intéressé au transfert d'un grand nombre de passagers de cabine et de pont; le problème est, ayant constaté qu'il existe dans cet instrument international qui a créé l'Organisation des conditions d'admission au Comité de sécurité maritime, de rechercher si ces conditions sont laissées au libre examen par l'Assemblée ou si celle-ci a une compétence liée, les données de la statistique devant se substituer en somme au pouvoir de choisir. Le Gouvernement de la République française, appliquant les principes d'interprétation souvent affirmés par la Cour selon lesquels il faut appliquer aux mots leur signification naturelle, pense que si l'Assemblée a reçu le pouvoir d'*élire*, elle a le pouvoir de choisir, raisonnablement et de bonne foi, entre les États qui présentent les conditions de fond requises par la Convention.

La Convention a défini clairement ce qu'il faut entendre par questions de sécurité maritime relevant de la compétence de l'Organisation dans son article 29; elle a fait d'une connaissance réelle de ces questions la condition nécessaire d'aptitude à la désignation comme membre du Comité de la sécurité maritime et elle a confié à l'Assemblée le pouvoir d'élire les membres de ce Comité.

C'est d'une manière identique que la Convention procède pour l'élection au Conseil (article 17 cité ci-dessus), par des critères techniques précis dont il a été fait application pour le premier Conseil dans l'annexe I à la Convention (*Recueil des Traités*, *op. cit.*, p. 105). Cette liste est intéressante pour la présente affaire, car elle montre immédiatement qu'un choix a été exercé, notamment pour l'application de l'article 17 *a)* (... « pays qui sont le plus intéressés à fournir des services internationaux de navigation maritime »), car les six États désignés ne sont pas les États *les plus intéressés* mais *parmi* les États les plus intéressés. Il y a eu élection, choix et non pas application d'un ordre statistique quelconque ainsi qu'il apparaît à la seule lecture de cette liste, et la consultation des différentes statistiques utilisables à cet effet le confirmerait, si besoin était. La même observation vaut pour les six États désignés à l'annexe I en application du paragraphe *b)* de l'article 17.

Or, les membres ainsi désignés en application de l'article 17 restent en fonction jusqu'à la clôture de la session ordinaire suivante de l'Assemblée, puis sont soumis à réélection. A partir de ce moment la compétence en matière de choix des membres du Conseil revient entièrement au Conseil (cf. article 18 cité ci-dessus). C'est donc, dans le régime fixé par la constitution de l'Organisation, le Conseil qui détermine quels sont les pays qui sont le plus intéressés à fournir des services internationaux de navigation maritime, ceux qui ont un intérêt notable à fournir de tels services et ceux qui sont le plus intéressés dans le commerce maritime international. L'article dit bien: « Le Conseil *détermine...* », pouvoir qui implique un examen

et une décision, un choix entre les pays qui présentent la qualification requise. Si le Conseil a ce pouvoir, il est naturel que l'Assemblée, appelée à élire les membres du Comité de la sécurité maritime selon des critères fixés, ait la même compétence et la même liberté de détermination. Les qualifications déterminées dans le traité jouent en somme le rôle de directives pour les organes chargés de procéder aux élections; pour satisfaire aux exigences multiples et diverses de représentativité dans les institutions internationales, il faut bien laisser aux assemblées une certaine liberté de choix, ce choix étant guidé par les conditions générales d'aptitude établies dans le traité créant chaque institution.

Toute autre interprétation aboutirait à différencier les pouvoirs du Conseil et de l'Assemblée en matière de désignation des membres des organismes directeurs de l'Organisation et, en l'absence d'une disposition formelle, cette interprétation n'est pas soutenable. Une telle thèse ferait en effet, on l'a déjà remarqué, d'une statistique, non officielle dans la plupart des cas, la seule source de désignation à des fonctions dans une institution internationale. Faut-il ajouter que ces statistiques ne sont pas opposables aux États comme documents ayant une portée juridique, ce que, au surplus, elles n'ont jamais prétendu avoir? Simple recueil de chiffres dont les éditeurs ne contrôlent ni ne garantissent l'exactitude, ce sont des informations utiles du point de vue économique mais sans force probante.

Il suffira, sur ce point, de signaler les travaux si intéressants du Bureau international du Travail pour rappeler les controverses, non réglées, sur diverses questions maritimes soulevées par l'application de l'article 28 de la Convention (notamment Conférence technique maritime préparatoire, Londres, automne 1956, P. T. M. C. I/1, I/3, III/1; Rapport de la Commission d'enquête de l'O. I. T., mai-novembre 1949; Commission paritaire maritime, 18me session, octobre 1955, JMC/18/4/1). D'autres Organisations internationales ont aussi étudié ces problèmes (cf. les publications de l'Organisation européenne de Coopération économique, « Les transports maritimes », MT (56) 4, publié en juillet 1956, pp. 53-55 et 67; MT (57) 7, publié en juillet 1957; même étude publiée en juin 1958 sans numéro, pp. 55-56; étude communiquée aux Gouvernements membres de l'O. E. C. E. le 31 janvier 1958, pp. 2 à 19). Ces diverses études ne font que confirmer l'impossibilité de transformer en source de droit les indications statistiques fortement controversées dont il s'agit.

Il faudrait, si l'on écartait l'interprétation ci-dessus présentée, examiner au fond les conditions énoncées dans le texte de l'article 28; chacune pose des problèmes. La condition de « possession » de flottes de commerce les plus importantes (largest ship-owning *nations*, dans le texte anglais; *países que posean*, dans le texte espagnol, *Recueil des Traités*, *op. cit.*, p. 86) pose le problème de la nationalité et de l'appartenance des navires (cf. notamment Gidel, *Le droit international public de la mer*, tome I, pp. 72 et

suivantes; Ripert, *Droit maritime*, 4me édition, 1950, tome I, pp. 300 et suivantes; Rapport de la Commission du Droit international sur les travaux de sa huitième session du 23 avril au 4 juillet 1956, Assemblée générale, 11me session, supplément n° 9 (A/3159), projet d'article 29, pp. 26 et 27; Conférence des Nations Unies sur le droit de la mer, 24 février-27 avril 1958, Documents officiels, volume IV, p. 30 (exposé de M. Wilfred Jenks pour l'O. I. T.), pp. 38-39 (exposé du professeur François), pp. 67-75 (débat général) avec un exposé de M. Gidel p. 68 et la proposition française d'article 29 rédigée par M. Gidel aux Annexes p. 127); voir aussi la documentation recueillie dans l'ouvrage de M. Claude Demaurex (Nouvelle Bibliothèque de Droit et de Jurisprudence, Lausanne 1958). Selon l'opinion du Gouvernement de la République française il n'est pas nécessaire de l'aborder pour répondre à la question posée à la Cour, pas plus qu'il n'est nécessaire de donner de définition juridique des autres notions mentionnées dans la Convention: l'intérêt important dans les questions de sécurité maritime, l'intérêt à fournir des services, l'intérêt notable, etc. C'est dans l'appréciation souvent complexe de ces diverses notions que réside le pouvoir de choix confié par la Charte de toute institution internationale aux organes qu'elle établit.

Un dernier argument montrerait, si cela était nécessaire, que l'interprétation ci-dessus proposée est bien conforme aux intentions des États qui ont établi l'Organisation. Le même article 28 qui fait l'objet de la requête pour avis dit dans son alinéa *b)* : « les membres du Comité de la sécurité maritime sont élus pour une période de quatre ans et sont rééligibles ». Si ces membres sont rééligibles, certains des huit États qui possèdent les flottes les plus importantes peuvent donc ne pas être réélus et cesser de siéger au Comité; à ce moment il n'y aurait plus, dans cette hypothèse, au Comité de la sécurité maritime les huit pays possédant *les* flottes *les plus importantes*. Et cependant telle est bien la volonté exprimée dans l'alinéa *b)*. Donc la conclusion est évidente, la seule obligation faite aux électeurs par l'article 28 *a)* est de choisir huit pays *parmi* ceux qui possèdent les flottes les plus importantes. On remarquera que le texte de l'article 19 établit le même système pour la réélection au Conseil; les membres sortants sont simplement rééligibles. Si les formules de l'article 19, les pays *le plus intéressés* à fournir des services internationaux de navigation maritime et le plus intéressés dans le commerce international maritime avaient une portée absolue, il n'y aurait pas de sortie possible pour ces États du Conseil de l'Organisation. Le choix entre les États le plus intéressés qui est possible à la réélection l'est aussi bien à la première élection.

Mais la démonstration que le Gouvernement de la République française s'est proposé de faire dans le cadre même de l'Organisation qui a sollicité l'avis de la Cour trouverait une ample confirmation, si cela était nécessaire, dans l'examen de la pratique d'autres institutions internationales.

II. — Examen de la pratique internationale.

L'intitulé même de la requête pour avis dans la présente affaire ne peut manquer d'évoquer le premier avis demandé à la Cour permanente de Justice internationale, le 22 mai 1922: « Si le délégué ouvrier des Pays-Bas à la 3me Conférence internationale du Travail a été désigné en conformité des dispositions du paragraphe 3 de l'article 389 du Traité de Versailles? » La Cour a donc interprété cet article: « Les Membres s'engagent à désigner les délégués et conseillers techniques non gouvernementaux d'accord avec les organisations professionnelles les plus représentatives soit des employeurs, soit des travailleurs du pays considéré, sous la réserve que de telles organisations existent. » La Cour a considéré que les mots *les plus représentatives* n'obligeaient pas à se mettre d'accord avec *toutes* les organisations les plus représentatives (*Recueil des Avis consultatifs*, Série B, n° 1, p. 24) et qu'il fallait, d'une manière raisonnable, assurer le choix de personnes représentant réellement les masses ouvrières intéressées. Aujourd'hui, les intérêts sont plus divers et les travailleurs ne sont pas les seuls mentionnés dans les statuts de l'Organisation, mais les principes d'interprétation posés en 1922 par la Cour demeurent valables; le choix de l'Assemblée ou du Conseil parmi les États membres, dans les conditions déterminées par la Charte de l'Organisation, doit s'inspirer d'une « interprétation raisonnable » (avis du 31 juillet 1922, *Recueil*, p. 22), aboutissant au choix de pays répondant effectivement aux intérêts définis par cette Charte.

Une institution, bien proche dans ses buts de l'Organisation, l'Organisation internationale de l'Aviation civile (ci-après O. I. A. C.) montre dans sa constitution des traits qui rappellent les dispositions de la Convention de Genève du 6 mars 1948. L'assemblée doit élire les 21 États membres du conseil en donnant une représentation appropriée: « 1) aux États d'importance majeure en matière de transport aérien; 2) aux États, non représentés par ailleurs, qui contribuent le plus à fournir des facilités pour la navigation aérienne civile internationale; et 3) aux États, non représentés par ailleurs, dont la désignation assure la représentation au Conseil de toutes les principales régions géographiques du monde » (article 50, alinéa *b)*, de la Convention de Chicago du 7 décembre 1944).

États qui contribuent le plus, la formule est identique à celle de la deuxième phrase de l'article 28 de la Convention du 6 mars 1948, quelle fut donc son interprétation par l'O. I. A. C. ?

La répartition en catégories n'a pas été considérée comme créant une obligation pour les candidats de choisir leur catégorie ni de se limiter à une catégorie. Le règlement intérieur a décidé que toute candidature est valable pour les trois catégories. L'article 57, alinéa *a)*, de ce règlement décide: « Le nom d'un État contractant non élu dans la première catégorie est automatiquement reporté sur la liste des candidats de la deuxième catégorie. Le nom d'un État contractant qui n'a pas été élu ni dans la première ni dans la

deuxième catégorie est automatiquement reporté sur la liste des candidats de la troisième catégorie. » Lors de la 10me session de l'Assemblée de l'O. I. A. C. la délégation du Venezuela soutint que cet article 57 *a)* du règlement était incompatible avec l'article 50, alinéa *b)*, de la Convention de Chicago; les débats montrent que l'opinion la plus générale fut d'interpréter l'article 50, alinéa *b)*, comme une directive à l'adresse des électeurs et non pas comme l'expression d'un droit de l'État remplissant les conditions énoncées d'obtenir un siège au Conseil (*cf. O. I. A. C., document* A. 10 WP/ 150, pp. 48-56, et le commentaire dans l'*Annuaire français de Droit international*, 1956, pp. 646-650).

Si l'interprétation ainsi donnée au sein de l'O. I. A. C. était contestée, les élections à cette organisation devraient être tenues pour irrégulières chaque fois que le vote des électeurs ne se serait pas porté sur les États qui *contribuent le plus* ... et il faudrait alors se poser la question des références à utiliser pour opérer le classement entre ces États en même temps que celle de leur opposabilité juridique aux intéressés et à l'Organisation.

Il semble donc au Gouvernement de la République française que, à la lumière des textes créant l'Organisation et de la pratique internationale, sans avoir à entrer dans le détail des désignations qui ont été faites au Comité de la sécurité maritime, le 15 janvier 1959, cette élection a été conforme aux directives posées par l'article 28 de la Convention de Genève du 6 mars 1948.

3. WRITTEN STATEMENT OF THE GOVERNMENT OF LIBERIA

Part I

THE PRELIMINARY PART

I. Introductory

The Court has been requested by the Assembly of the Inter-Governmental Maritime Consultative Organization (hereinafter called "I.M.C.O.") [1], in accordance with Article 56 of the Convention for the Establishment of I.M.C.O. of March 6, 1948 [2] (hereinafter called "the I.M.C.O. Convention"), to give an Advisory Opinion on the following question:

> "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on 15 January 1959, constituted in accordance with the Convention for the Establishment of the Organization?"

By Article IX (2) of the Agreement between the United Nations and I.M.C.O., which came into force after its approval by the Assembly of I.M.C.O. of January 13, 1959 [3], the General Assembly of the United Nations, in pursuance of Article 96 (2) of the Charter of the United Nations, authorized I.M.C.O. to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities.

The present Statement is filed by the Government of Liberia in accordance with the terms of the Order of the Court of August 5, 1959, fixing the time-limits for the presentation of written statements.

II. The Background

A. *Article 28 of the I.M.C.O. Convention*

The election to the Maritime Safety Committee on January 15, 1959, was held in pursuance of the terms of Article 28, paragraph *(a)*, of the I.M.C.O. Convention, which provides as follows:

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[1] IMCO/A.1/Res. A.12 (I), January 19, 1959.

[2] Article 56 provides as follows:

"Any legal question which cannot be settled as provided in Article 55 shall be referred by the Organization to the International Court of Justice for an Advisory Opinion in accordance with Article 96 of the Charter of the United Nations."

[3] I.M.C.O. Assembly, First Session, Summary Record of the Sixth Meeting, IMCO/A.1/SR.6, pp. 7-8.

"The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

B. *The Issues*

The particular issues which have arisen relate principally to the election of those eight members of the Maritime Safety Committee chosen in pursuance of the phrase in Article 28 *(a)*: "of which not less than eight shall be the largest ship-owning nations".

By its terms, Article 28 *(a)* clearly distinguishes between two groups of members of the Maritime Safety Committee: those who are elected as the eight largest ship-owning nations (and who may for convenience occasionally be called "the eight") and the remainder who are elected so as to ensure the adequate representation of other Members of the Organization and by reference to such criteria as interest in the supply of large numbers of crews and in the carriage of large numbers of passengers, or the representation of major geographical areas.

In the view of the Government of Liberia, the effect of the distinction thus drawn and of the terms in which it is made is to place upon the Assembly a mandatory duty to elect to the Maritime Safety Committee the governments of those eight nations at least which are "the largest ship-owning nations". The reference in Article 28 *(a)* to the possession of "an important interest in maritime safety" applies equally to the election of "the eight" and of "the six"; and is so broad that taken by itself it can scarcely qualify the positive obligation, as regards the election of the first category of members of the Maritime Safety Committee, to select only those nations which really are "the largest ship-owning nations" and not others.

For the purpose of identifying the eight it is, of course, necessary to apply some criterion for the measurement of the size of a ship-owning nation. The appropriate criterion, the Government of Liberia contends, is that of registration, i.e. reference to the quantity of tonnage which appears on the national register of any particular Member. This criterion is exclusive; and it is objective.

By reference to it, Liberia ranks third in size among ship-owning nations. On December 31, 1958, 1,073 vessels flew the Liberian flag and their total gross registered tonnage was 11,074,559 tons.

On this basis alone then, the Government of Liberia was entitled to election to the Maritime Safety Committee [1].

Without prejudice to its position in relation to the adoption of registration as the relevant criterion, the Government of Liberia also refers to another possible test of size, namely, that of the quantity of shipping owned by the nationals of Members. Applying this criterion to the Liberian merchant marine, the position, as at December 31, 1958, was that 514 ships, totalling 6,076,030 gross registered tons, were registered in the name of Liberian nationals, whether individuals or companies. Had this test been applied in the election to the Maritime Safety Committee, Liberia would have ranked fifth among nations and would thus have been entitled to election.

If, therefore, the validity of the election to the Maritime Safety Committee depends solely upon the election by the Assembly of the correct Members tested by objective and exclusive criteria, it is clear that the Maritime Safety Committee elected on January 15, 1959, is not validly constituted.

However, the matter does not rest there. The validity of an election must be tested not only by reference to substantive criteria but also by reference to conformity with procedural requirements. As the Government of Liberia repeatedly pointed out during the course of the election, there was no evidence before the Assembly upon the basis of which members of that body could apply any criterion other than that of registration. Therefore, since the Assembly, by failing to elect Liberia and Panama to the Committee, must be deemed to have applied some criterion other than registration, it must have done so on the basis of no evidence whatsoever—a basis which clearly cannot be compatible with the due exercise of a power dependent upon objective criteria.

In addition, as the Government of Liberia will in due course elaborate, the conduct of the election was such as to give rise to a clear inference that the States which voted against Liberia were guilty of a *détournement de pouvoir* in the use which they made of their power.

In short, the question before the Court, couched as it is in terms of the validity of the election to the Maritime Safety Committee, raises two distinct classes of issues: (i) the issues relating essentially to the interpretation of Article 28 *(a)* of the I.M.C.O. Convention, and (ii) the issues arising from the manner in which the election was conducted. Each of these two groups of issues will be examined by the Government of Liberia in the course of the present Statement.

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[1] Similar considerations appear to apply to the Government of Panama. However, having regard to the fact that the Government of Panama will no doubt be presenting its own Statement to the Court, the Government of Liberia will confine its observations in the present Statement to its own position.

C. *The course of the election to the Maritime Safety Committee, January 13-15, 1959*

Before turning to examine in detail the issues referred to above, it may be helpful if the Government of Liberia first sets out the actual course of the events which may be described as "the election of the Maritime Safety Committee".

The election of the members of the Maritime Safety Committee was listed as Item 11 of the Provisional Agenda of the Assembly [1]. This Agenda was adopted at the first session of the Assembly on Tuesday, January 6, 1959 [2].

No further overt steps were taken in connection with the election until January 13, 1959.

However, for some days previous to January 13, 1959, reports had reached the delegation of Liberia that the so-called "traditional" maritime nations, which included the United Kingdom, Norway, the Netherlands, France and Italy, were preparing to exclude Liberia and Panama from the Maritime Safety Committee. The motive underlying any such development would appear to have been the implementation of their declared policy to eliminate by all means the competition emanating from shipping of the non-traditional States. In short, an economic and commercial controversy was to be introduced into the election of a technical body, the Maritime Safety Committee.

The delegation of Liberia, though aware of the sentiments of the traditional maritime governments towards the non-traditional maritime governments, was not, at first, prepared to give credence to rumours which, if true, would have meant that the governments concerned were, as the delegation of Liberia saw the matter, preparing to violate the clear, express and mandatory requirements of Article 28 *(a)*. Nevertheless, so that doubts might be eliminated and confidence be established, the Government of Liberia prepared and deposited with the Secretariat on the morning of January 13, 1959, a draft resolution of which the operative part provided "that for the purposes of Article 28, the eight largest ship-owning nations shall be determined by reference to the figures for gross registered tonnage as they appear in the issue of Lloyd's Register of Shipping current on the date of election" [3].

At about the same time as the delegation of Liberia filed its draft, there was being circulated by the Secretariat a Working Paper [4] containing a list of the members of I.M.C.O. arranged in the order of the quantity of gross tonnage registered in their territories. The figures of tonnage were taken from Lloyd's *Register of Shipping*

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[1] IMCO/A.1/2/Rev. 1.

[2] See I.M.C.O. Assembly, First Session, Summary Record of the First Meeting, January 6, 1959, IMCO/A.1/SR.1 p. 9.

[3] IMCO/A.1/Working Paper 8.

[4] IMCO/A.1/Working Paper 5.

Statistical Tables, 1958. On this list Liberia appears in the third place and Panama in the eighth place.

On the same day, though shortly afterwards, there was circulated a draft United Kingdom resolution [1] relating to the conduct of the election for the first eight places in the Maritime Safety Committee. The operative part of this resolution was worded as follows:

> "that a separate vote shall be taken for each of the eight places in the Committee,
> that the voting shall be in the order in which the nations appear in the Secretary-General's list [2], and
> that those eight nations which first receive a majority of votes in favour shall be declared elected".

The tabling of this draft resolution was the first open confirmation which the delegation of Liberia received of the rumours which had earlier been heard.

The principal element in the United Kingdom draft resolution which caused concern to the delegation of Liberia was the fact that, despite the clear indication given in the Secretary-General's list of the identity of the eight largest ship-owning nations when tested by the objective and exclusive criterion of gross registered tonnage, the United Kingdom had proposed not to elect the first eight names on the list *en bloc*, but to consider them individually. This suggested to the delegation of Liberia either that the delegation of the United Kingdom did not regard the election of the eight largest ship-owning nations, determined by reference to gross registered tonnage, as mandatory or that it considered that it was entitled to introduce alien and subjective criteria into the election. The proposal of a procedure allowing a separate vote on each Member was regarded as intended to enable the United Kingdom delegation and others to discriminate against Liberia and Panama. As events established, the procedure proposed by the United Kingdom was in fact employed for this very purpose.

Nor was the doubt with which the delegation of Liberia regarded the United Kingdom proposal in any way diminished by the fact that the United Kingdom delegation, though playing an active role in procedural matters, was apparently unconcerned to make proposals for regulating the procedurally more complex matter of the election of the remaining six members of the Maritime Safety Committee.

In the light of its assessment of the motives underlying the United Kingdom proposal, the delegation of Liberia determined that the issues inherent in the United Kingdom draft should be raised before the Assembly in the clearest way prior to the actual holding of the election. In fact, nothing further was done on January 13. Agenda item 11 was not reached until nearly the end of the

[1] IMCO/A.1/Working Paper 6.
[2] IMCO/A.1/Working Paper 5.

afternoon and, at that point, the representative of the United States of America proposed that the matter should be postponed till the next day.

On Wednesday, January 14, the Assembly began the discussion of the election of the Maritime Safety Committee against a somewhat confused procedural background. By that time the Assembly had before it not only (i) the United Kingdom and (ii) the Liberian draft resolutions of January 13 [1], but also (iii) a United States draft resolution dated January 13 for the establishment of a Provisional Maritime Safety Committee [2].

The discussion was opened by the delegate of the United Kingdom [3]. The next speaker was the representative of Liberia [4], whose speech is of significance in that it laid before the Assembly the views of the Government of Liberia upon the principal issues now before the Court. Moreover, it is worthy of note that the delegate of Liberia, having taken his stand upon a legal interpretation of Article 28*(a)* of the Convention, at the outset proclaimed his willingness and desire to seek judicial determination of the disputed issues. Indeed, he indicated in terms the questions which, in his view, were at that time the ones on which his Government would have liked the Assembly to seek the opinion of the Court [5]. In the course of this speech, the delegate of Liberia proposed certain amendments [6] to the United Kingdom draft resolution [7].

The debate continued with speeches by the delegates of Norway, Panama, the United States of America, the Netherlands, the Dominican Republic, India and Belgium. In the course of the afternoon of January 14, the United States proposal for the establishment of a provisional Maritime Safety Committee was rejected by 14 votes to 12, with 2 abstentions [8].

The debate was resumed on the morning of January 15, 1959 [9]. The first speech was made by the delegate of the United States of America, who introduced the text [10] of a consolidated amendment proposed by the United States and Liberia to the United Kingdom draft resolution [11]. He was followed by the delegates of the Netherlands, the United Kingdom, the Dominican Republic, Panama and Liberia. The vote was then taken on the consolidated text of the Liberian and United States amendments [10], which was rejected by

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[1] IMCO/A.1/Working Papers 6 and 8.
[2] IMCO/A.1/Working Paper 7.
[3] See I.M.C.O. Assembly, First Session, Summary Record of the Seventh Meeting, January 14, 1959, IMCO/A.1/SR.7, p. 2.
[4] *Ibid.*, p. 4.
[5] *Ibid.*, p. 5.
[6] IMCO/A.1/Working Paper 10.
[7] IMCO/A.1/Working Paper 6.
[8] IMCO/A.1/SR.7, pp. 11-12.
[9] IMCO/A.1/SR.8.
[10] IMCO/A.1/Working Paper 11.
[11] IMCO/A.1/Working Paper 6.

17 votes to 11. At that point, the delegate of Liberia once again repeated his suggestion that the issues which had been raised should be referred to the Court by way of a request for an Advisory Opinion. He proposed that until the Opinion of the Court was received, the work of the Maritime Safety Committee should be carried on by a subsidiary body established by the Assembly under the powers conferred in Article 16 *(c)* of the I.M.C.O. Convention [1]. The President of the Assembly ruled, however, that the voting on the United Kingdom draft resolution should proceed forthwith [2]. The United Kingdom draft resolution was then adopted by 18 votes to 9, with 1 abstention [3].

Thereupon, the Assembly proceeded to vote on the eight countries to be elected to the Maritime Safety Committee according to the procedure proposed in the United Kingdom resolution. The United States of America was elected first, by 27 votes to none, with one abstention (Argentina) [4]. The United Kingdom was elected second by the same vote [5]. The third vote was on Liberia. The vote was 11 in favour, 14 against, with 3 abstentions [6]. Accordingly Liberia was not elected a member of the Maritime Safety Committee. The voting then proceeded in the order of the Secretary-General's list, but in all subsequent votes Liberia and Panama abstained. When its turn came, Panama, like Liberia, was not elected [7]. The eight members finally "elected" were: the United States of America, the United Kingdom, Norway, Japan, Italy, the Netherlands, France and the Federal Republic of Germany.

Immediately after the conclusion of the voting, the delegate of Liberia stated that in his view, as a result of the failure to elect Liberia and Panama, the elections were null and void. It was for that reason that he had abstained from further voting after the vote on Liberia had taken place [8].

Further explanations of voting by the delegations of the Soviet Union, Honduras, Panama and Argentina were given at the opening of the ninth meeting in the afternoon of January 15, 1959 [9].

The Government of Liberia concludes this account of the election of the Maritime Safety Committee with the following observation: only seven States addressed themselves to the legal issues in their speeches. Of these, two were Liberia and Panama and one was the United States, which supported the legal interpretation adopted by Liberia and Panama. Of the speeches made by the remaining four (the United Kingdom, Norway, the Netherlands and the

[1] IMCO/A.1/SR.8, p. 8.
[2] *Ibid.*, p. 9.
[3] *Ibid.*, p. 10.
[4] *Ibid.*, p. 11.
[5] *Ibid.*, p. 12.
[6] *Ibid.*, p. 13.
[7] *Ibid.*, p. 18.
[8] *Ibid.*, p. 21.
[9] IMCO/A.1/SR.9, pp. 2-3.

Soviet Union), it is worthy of note that there was no unanimity of view as to the appropriate criteria to be applied in the election.

Part II

THE INTERPRETATION OF ARTICLE 28 *(a)*

The Government of Liberia will first consider the issues connected with the interpretation of Article 28 *(a)*.

Article 28 *(a)* provides as follows:

> "The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

The Government of Liberia submits that the Maritime Safety Committee is not constituted in accordance with the I.M.C.O. Convention because in electing the largest ship-owning nations the Assembly failed, in fact, to elect those eight which are the largest, as required by the I.M.C.O. Convention. The specific failure lay in the non-election of Liberia and Panama which, by reason of their registered tonnage, rank third and eighth among ship-owning nations.

The Government of Liberia submits also that the words "having an important interest in maritime safety" do not create a controlling independent condition. It is, in any case, inherent in the quality of being one of the eight largest ship-owning States that the State concerned has "an important interest in maritime safety".

I. The Mandatory Character of Article 28 (a)

The first aspect of Article 28 *(a)* which the Government of Liberia would mention is the mandatory quality of the reference to "the largest ship-owning nations". The Article employs the words "shall be" in relation to "not less than eight" Members. The use of the words "shall be" means that they "must be". Likewise, the reference is to *the* largest ship-owning nations. The Article does not provide for an election *from* the eight largest ship-owning nations, but for an election *of* the eight largest ship-owning nations.

There is no warrant in this connection for regarding the use of the word "election" in relation to the eight largest ship-owning nations as diminishing the mandatory effect of the words "shall be" or as conferring an element of discretion upon the States participating

in the process of identifying the eight States concerned. The use of the word "election" may be explained in two ways. In the first place, it is necessary to have a point in time at which the relative size of ship-owning States one to another can be determined. Statistics, after all, can and do alter. If the requirement relating to the eight were simply mandatory, it might also be automatic; and might thus mean that the membership of the Committee could change between elections if, for example, a ninth nation not on the Committee expanded its shipping and moved up into eighth place. This possibility is eliminated by the introduction of a formal process of identifying the eight largest ship-owning nations which thus fixes the moment in time at which relative size of ship-owning States is assessed. That process is, for convenience, called "election". A second possible explanation of the use of the word "election" is that it leaves open to the Assembly, on the basis of the freedom implicit in the use of the words *"not less than* eight", the possibility of selecting not merely eight, but more than eight, States on the basis of size, rather than by reference to the other criteria mentioned in Article 28 *(a)*.

II. The Largest Ship-Owning Nations

A. *The correct criterion: registered tonnage*

The determination of the "largest ship-owning nations" must, in the view of the Government of Liberia, rest exclusively on the criterion of gross registered tonnage. Those nations—and those nations alone—which are largest in terms of registered tonnage are the largest ship-owning nations within the meaning of Article 28 *(a)*.

B. *Considerations in support of "registered tonnage"*

This view of the matter is supported by reference to the following considerations:

1. *Registration is the most effective connection.*

a. *Relevance of the doctrine of effectiveness.*

In interpreting a treaty, the Court should prefer that construction which is most likely to further, or least likely to hinder, the achievement of purposes for which the treaty was concluded. This principle is an established feature of the jurisprudence of the Court in relation to the interpretation of treaties generally and of international constituent instruments in particular. Thus, in the Advisory Opinion on the *Acquisition of Polish Nationality* [1], the Court said, in relation to the interpretation which it proposed to adopt:

> "If this were not the case, the value and sphere of application of the Treaty would be greatly diminished. But in the Advisory Opinion given with regard to the questions put concerning the

[1] *P.C.I.J., Series B*, No. 7.

> German colonists in Poland, the Court has already expressed the view that an interpretation which would deprive the Minorities Treaty of a great part of its value is inadmissible [1]."

The Court has applied this doctrine with particular effect in interpreting the scope of the powers and functions of international organs. In dealing with the powers of the Mixed Commissions under the Greco-Turkish Agreement of December 1, 1926, the Court said:

> "All the duties indicated above are entrusted to the Mixed Commission as the sole authority for dealing with the exchange of populations, and special stress should be laid on the fact that these duties have been entrusted to it with the object among other things of facilitating this exchange. It follows that any interpretation or measure capable of impeding the work of the Commission in this domain must be regarded as the contrary of the spirit of the clauses providing for the creation of this body [2]."

The same attitude permeates the whole of the Advisory Opinion given by the Court on *Reparations for Injuries suffered in the Service of the United Nations* [3]. Thus, where the Court was speaking of the capacity of the United Nations, it said:

> "It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged [4]."

Again, in referring to the obligations of the Members of the United Nations, the Court said:

> "It must be noted that the effective working of the Organization —the accomplishment of its task, and the independence and effectiveness of the work of its agents—require that these undertakings should be strictly observed [5]."

b. *The application of the doctrine of effectiveness.*

In the light of this approach to the interpretation of treaties, the Government of Liberia submits that the contents of the I.M.C.O. Convention should be construed in a manner which is most likely to further the purposes of I.M.C.O. generally and, where the contents relate to the Maritime Safety Committee, to the purposes of that Committee in particular. As regards the expression "the largest ship-owning nations", the interpretation best suited to achieve the purposes involved is one which identifies it with "the nations in which the largest quantity of tonnage is registered".

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[1] At pp. 16-17.

[2] *Interpretation of the Greco-Turkish Agreement of December 1, 1926, P.C.I.J., Series B*, No. 16, at p. 18.

[3] *I.C.J. Reports 1949*, p. 174.

[4] At p. 179.

[5] At p. 183.

The validity of this consideration may best be established by an examination, first, of the objects of I.M.C.O. and of the Maritime Safety Committee and, second, of the legal consequences which flow from the link of registration.

i. *The purpose of the Maritime Safety Committee.*

The purposes of I.M.C.O. are set out in general terms in Article 1 of the Convention. Detailed reference to these purposes is, however, unnecessary. So far as maritime safety is concerned, the only relevant provision is in paragraph *(a)* of Article 1:

> "The purposes of the Organization are: *(a)*... to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation."

The duties of the Maritime Safety Committee are more particularly defined in Article 29 *(a)* in the following terms:

> "The Maritime Safety Committee shall have the duty of considering any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety."

The Maritime Safety Committee is also directed, by Article 30, among other things, to submit to the Assembly proposals made by Members for safety regulations or for amendments to existing safety regulations, together with its comments or recommendations thereon.

ii. *Registration and the implementation of the purposes of the Maritime Safety Committee.*

In the submission of the Government of Liberia, it is clear that the implementation of any recommendation which the Maritime Safety Committee may make will depend upon action by the individual members of I.M.C.O. Indeed, the close connection between the effective achievement of the objects of I.M.C.O. and the capacity to implement its recommendations was stated by the United Kingdom Delegate to the United Nations Maritime Conference of 1948 in the following terms: "What was essential was that the Organization's recommendations should have the support of the countries which were called upon to implement them. Otherwise, they would be valueless" [1].

There may, of course, be some few matters within the purview of the Maritime Safety Committee which could be dealt with by States on a territorial basis. Generally, however, in relation to

[1] United Nations Maritime Conference, Geneva, February 19 - March 4, 1948, Revised Summary Records. U.N. document E/CONF.4/SR. Revised, p. 27.

items within the competence of the Maritime Safety Committee, it is clear that the progressive development and application of improved standards must depend upon their incorporation into and enforcement by the "personal" law of the vessel—the law to which it remains permanently subject regardless of its location. This law, in the submission of the Government of Liberia, is the law of the State in which the vessel is registered.

aa. *The law of the place of registration as the law of the ship.*

It is an almost incontestable proposition that the personal law of a vessel is that of the State in which it is registered. Admittedly, the authorities frequently speak of "the law of the flag" or "the national law" of the vessel as being its personal law. But there can be little doubt that in such cases the fact of registration has simply been assumed as the basis of the right to fly the flag or of the possession of nationality [1].

(1) *International judicial decisions.* The principle that it is the law of the flag—being the law of the place of registration—which governs the conduct of a vessel and those on board her on the high seas has been clearly stated by the Permanent Court of International Justice. Thus in the case of the *S.S. Lotus*, the Court said:

> "It is certainly true that—apart from certain special cases which are defined by international law—vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. [2]"

(2) *The practice of States—statements by Governments.* One episode shows with striking clarity the general acknowledgment by States of the proposition that it is the national State of the vessel, as opposed to the State of which her owners may be nationals, which enjoys the exclusive right to control the vessel.

During the First World War the United Kingdom sought to requisition a number of vessels registered in the Netherlands, on the ground that though they were owned by companies incorporated in the Netherlands, they were really the property of British subjects who, as shareholders, had invested capital in these companies. The Netherlands Government protested against the proposed action in the following terms:

> "La mesure britannique ... constitue, du reste, une atteinte directe aux droits des Pays-Bas, car c'est le Gouvernement néer-

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[1] Of particular relevance as an illustration of this fusion of ideas between registration and nationality, see the following observation in Colombos, *Law of the Sea* (3rd ed.), p. 216: "Every State has the right to enact regulations setting out the conditions under which it will grant registration at its ports, and consequently its nationality, to merchant ships."

[2] *P.C.I.J., Series A*, No. 10, at p. 25.

landais seul, à l'exclusion de tout autre, qui est libre de réquisitionner des navires battant pavillon néerlandais. L'unique cas où la réquisition par un belligérant serait admissible est celui d'absolue nécessité militaire. Le droit des gens n'en connaît pas d'autre... Il suffit de constater qu'en vertu du principe susdit, c'est le pavillon seul et non le propriétaire qui entre en jeu pour déterminer la place que le navire occupe comme sujet du droit international...

Si, toutefois, le Gouvernement britannique veut bien se rendre compte des conséquences qu'aurait pour la navigation internationale l'adoption d'une règle d'après laquelle la nationalité de la majorité des actionnaires — d'ailleurs souvent inconnus — d'une société à laquelle appartient un bâtiment de haute mer constituerait le critérium de la nationalité du navire même, il ne pourra manquer de s'apercevoir à quel point sa décision récente est contraire au principe très rationnel qui régit la matière... [1]"

It may be noted that in a later note, the British Government in effect acquiesced in the view expressed by the Netherlands Government. The United Kingdom reply stated that "His Majesty's Government do not base their right to requisition these ships upon the fact of their being actually British-owned or controlled..." [2].

(3) *The practice of States—judicial decisions.* There are also numerous decisions of municipal courts which acknowledge the controlling force of the law of the place of registration. Two of the most striking have been given by the courts of the United Kingdom. In the course of his judgment in *Reg.* v. *Keyn (The Franconia)*, Cockburn, L.C.J., said:

"... by the received law of every nation a ship on the high seas carries its nationality and the law of its own nation with it, and in this respect has been likened to a floating portion of the national territory. All on board, therefore, whether subjects or foreigners, are bound to obey the law of the country to which the ship belongs, as though they were actually on its territory on land, and are liable to the penalties of that law for any offence committed against it...

... On board a foreign ship on high seas, the foreigner is liable to the law of the foreign ship only. It is only when a foreign ship comes into the ports or waters of another State that the ship and those on board become subject to the local law. These are established rules of the law of nations. They have been adopted into our own municipal law, and must be taken to form part of it. [3]"

Again, in the case of *M. Isaacs and Sons, Limited*, v. *William McAllum and Company, Limited*, it was held that a change in a vessel's flag after entering into a charterparty was a material change in the subject-matter of the contract and entitled the charterer to damages. In reaching this conclusion, Rowlatt, J.,

[1] Note from M. Loudon to Sir W. Townley, June 11, 1917. *British and Foreign State Papers*, Vol. III, pp. 466-468. The episode is discussed in Rienow, *The Nationality of a Merchant Vessel* (1937), pp. 100-103.

[2] Mr. Balfour to Sir W. Townley, July 18, 1917. *Ibid.*, pp. 468-469.

[3] [1876] 2 Ex. D. 63, at p. 161.

made the following observations upon the relevance of the flag, i.e. registration, to the operation of the ship:

> "I do not think it could possibly be held that it makes no difference under what flag a ship sails. The law of the flag is of direct importance as affecting the status of the ship. It is also of importance in its collateral effects, as, for instance, in determining the nationality and therefore to some extent the discipline and morals of the crew and in many other respects. [1]"

That these are not isolated decisions or, on this particular point, in any way contrary to the current of authority may be readily ascertained by reference to the cases cited by Lord McNair in *Legal Effects of War* (3rd ed., 1948), pages 440-445.

(4) *The practice of international organizations*. The particularly close connection between registration and the law applicable on board ship is also reflected in the practice of the International Labour Organisation. In 1936, the Organisation inserted into those labour conventions dealing with maritime matters a reference to registration as the basis for identifying a ship with a State. Dr. Jenks has explained the decision of the I.L.O. not to employ the concept of nationality for this purpose in the following terms:

> "Nationality might be thought to refer not to the flag flown, the right to fly a particular flag being normally, as documents before the Committee showed, determined by registration, but to the nationality of the ownership and control of the vessel, and perhaps even to the nationality of the real as distinct from the apparent ownership and control. It was pointed out to the Committee that nationality, understood in this sense, is not the criterion which determines the jurisdictional rights of States over conditions of employment on board, and that the criterion defining the obligations to be assumed by States must necessarily correspond with that which, under general rules of international law, delimits the extent of their powers of control. [2]"

(5) *Writers of authority*. These observations are reinforced, moreover, by the views of writers of authority. The following extracts may be referred to in this connection:

> Gidel: "Par le fait qu'ils relèvent chacun d'un État déterminé, les navires sont soumis à un contrôle de la part de l'État dont ils portent le pavillon; ils sont astreints à une certaine discipline établie par les lois et les règlements de l'État du pavillon; en cas de méconnaissance des prescriptions de cet État, ils s'exposent à des sanctions... [3]"
>
> Oppenheim: "It [a State] can in particular authorize such vessels to sail under its flag as are the property of foreign subject; but such

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[1] [1921] 3 K.B. 377, at p. 386.

[2] Jenks, "Nationality, the Flag and Registration as Criteria for Demarcating the Scope of Maritime Conventions", *Journal of Comparative Legislation*, Vol. XIX (1937), p. 245, at p. 249. Dr. Jenks was a legal adviser to the I.L.O. at the time.

[3] *Le Droit international public de la Mer*, Vol. I (1932), p. 73.

foreign vessels sailing under its flag fall thereby under its jurisdiction... Private vessels are considered as though they were floating portions of the flag State only in so far as they remain whilst on the open sea in principle under the exclusive jurisdiction and protection of the flag State. Thus the birth of a child, a will or business contract made, or a crime committed on board ship, and the like are considered as happening on the territory, and therefore under the territorial supremacy, of the flag State [1]."

Hall: "It is unquestioned that in a general way a State has the rights and the responsibilities of jurisdiction over ships belonging to it while they are upon the open sea, but a difference of opinion exists as to the theoretical ground upon which the jurisdiction of the State ought to be placed... [2]"

Colombos: "... as regards the competence of Courts to deal with questions arising in merchant ships on the high seas, it is a generally recognized rule that the flag-State of the vessel is competent to deal with all matters, civil and criminal, which originate in the ship [3]."

Similar views may be found in the works of Antokolel [4], Fauchille [5], Ladreda [6], Ruiz Moreno [7], Podesta Costa [8], Rousseau [9] and Judge Spiropoulos [10].

bb. *The exclusive character of the jurisdiction of the State of registration.*

There is another feature of the jurisdiction of the State of registration upon which the Government of Liberia considers that it is desirable to lay emphasis. The State of registration does not merely have a competence to regulate conduct on board one of its vessels; it possesses, at least in its own waters and on the high seas, an exclusive competence. In relation to vessels, the application of the municipal law of the State outside its own waters is restricted to those vessels which are registered within that State and are, for that reason, considered as "national" vessels. This element of exclusiveness has been referred to in the following terms:

"The most important of the customary rules is that every State has exclusive jurisdiction over all the ships which fly its flag ... every State is at liberty to determine for itself the conditions under which it will permit the use of its flag... On the high seas the national jurisdiction is exclusive, in the sense that every act which takes place on board a ship is governed solely by the civil and criminal

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[1] *International Law*, Vol. I (8th ed., 1955), pp. 595 and 597.
[2] *International Law* (8th ed., 1924), p. 301.
[3] *Law of the Sea* (3rd ed., 1954), p. 234.
[4] *Tratado de Derecho Internacional Público* (3rd ed.), III (1941), p. 18, § 319.
[5] *Traité de droit international public*, I (2), (1925), pp. 925-931; II (1921), p. 998.
[6] *Tratado de Derecho Internacional Público* (1928), I, pp. 193-198.
[7] *Lecciones de Derecho Internacional Público* (1934), II, pp. 53-54 and 73.
[8] *Manual de Derecho Internacional Público* (1943), pp. 140-141.
[9] *Droit international public* (1953), pp. 417-418.
[10] *Traité théorique et pratique du droit international public* (1933), pp. 157, 168, 169.

law of the flag State and is subject to the jurisdiction of the national courts [1]."

c. *Conclusion. Maritime safety and the law of the place of registration.*

The conclusion which flows from the authorities cited above hardly requires elaboration. If, for the purpose of interpreting the expression "the largest ship-owning nations", it is relevant to consider what interpretation is most likely to advance the cause of maritime safety, it is manifest that registration rather than ownership is the relevant consideration. No matter how many conventions are concluded on maritime safety, their enforceability in relation to any particular vessel on the high seas ultimately depends upon the law of the State of registration. This is a juridical fact which cannot be disregarded. The law of the State of the owner, if it is not the same State as that of registration, is for all practical purposes totally irrelevant. Indeed, emphasis upon it in the context of maritime safety is more likely to hinder than aid development in this vital field.

2. *Prevailing international practice is based on registration.*

The second consideration upon which the Government of Liberia relies as supporting its contention that the content of the expression "ship-owning nation" is dependent on registration follows closely upon the first. Reference to the practice of States, as manifested in international conventions, indicates that registration, rather than any other criterion, is generally employed as the basis for determining the vessels to which the treaty commitments of a State extend.

a. *Multilateral treaties.*

In order to ascertain more specifically the nature of the international practice on this matter, the Government of Liberia has examined the principal multilateral maritime conventions concluded since the First World War. Two conclusions of significance may be drawn from an analysis of this kind. The first is that the test of registration is now specifically employed in the major international conventions of a technical maritime character, such as safety of life at sea and the pollution of the sea by oil. The second is that in those cases where "registration" is not specifically employed to describe the relationship between the State and its vessels, the wording of the convention is nevertheless usually open to the interpretation that registration is the appropriate connecting factor. In no case does it appear that any specific reference is made to any other connecting factor.

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[1] Smith, *Law and Custom of the Sea* (2nd ed., 1950), pp. 46 and 49.

i. *Express references to registration.* It is significant that those conventions which refer expressly to "registration" as the connecting factor are the ones of a technical character, usually requiring some measure of legislative action by a flag State in relation to its vessels.

This is true, in particular, of the Convention for the Safety of Life at Sea, June 10, 1948. Article II of this Convention provides as follows:

> "The ships to which the present Convention applies are ships registered in countries the Governments of which are Contracting Governments, and ships registered in territories to which the present Convention is extended under Article XIII [1]."

Similarly, Article II of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, provides that

> "The present Convention shall apply to sea-going ships registered in any of the territories of a Contracting Government... [2]"

Reference may also be made in this connection to the international labour conventions which deal with maritime matters. The practice of the International Labour Organisation is based in this matter upon the proposals of a Co-ordination Committee which sat during the Twenty-First Session of the International Labour Conference to consider what formula might most appropriately be employed in five important conventions adopted at that Conference: the Officers' Competency Certificates Convention; the Holidays with Pay (Sea) Convention ; the Shipowners' Liability (Sick and Injured Seamen) Convention; the Sickness Insurance (Sea) Convention; and the Hours of Work and Manning (Sea) Convention.

The Co-ordination Committee examined nationality, the flag and registration as possible criteria. Nationality was rejected on the ground that, although normally determined by registration, it might be thought to refer "to the ownership and control of the vessel, and perhaps even to the nationality of the real as distinct from the apparent ownership and control". The only available account of the proceedings of the Committee continues in these terms:

> "It was pointed out to the Committee that nationality, understood in this sense, is not the criterion which determines the jurisdictional rights of States over conditions of employment on board, and that the criterion defining the obligations to be assumed by States must necessarily correspond with that which, under general rules of international law, delimits the extent of their power and control [3]."

[1] United Kingdom *Treaty Series* No. 1 (1953), Cmd. 8720.

[2] United Kingdom *Treaty Series* No. 56 (1958), Cmnd. 595.

[3] The published records of the International Labour Organisation do not contain any record of the deliberations of the Co-ordination Committee. However, an account of the work of the Committee may be found in an article by Dr. Jenks entitled "Nationality, the Flag and Registration as Criteria for Demarcating the Scope of Maritime Conventions", in *Journal of Comparative Law and International Legislation*, Vol. XIX (1937), p. 245.

The flag was rejected as a criterion principally because of the difficulties which might arise in connection with the application of the Conventions to colonies. Finally, the Committee proposed, and the Conference accepted, a clause stating that the Conventions applied to "vessels registered in a territory for which this Convention is in force" [1].

Mention may also be made of the Convention of June 23, 1926, concerning the Repatriation of Seamen [2], of which Articles 1 and 6 provide as follows:

> "*Article 1.* This Convention shall apply to all sea-going vessels registered in the Country of any Member [of the I.L.O.] ratifying the Convention, and to the owners, masters and seamen of such vessels...
>
> *Article 6.* The public authority of the country in which the vessel is registered shall be responsible for supervising the repatriation of any member of the crew in cases where this Convention applies, whatever may be his nationality, and where necessary for giving him his expenses in advance."

In addition, Article 274 of the Bustamente Code provides that "the nationality of ships is proved by the navigation license and the certificate of registration and has the flag as an apparent distinctive symbol" [3].

ii. *Other multilateral conventions.* Almost equally important are those multilateral conventions which use the expression "vessels belonging to a State" or a variant thereof. The especial significance of this wording lies in the fact that in at least four of the conventions in which it appears, its direct connection with registration is made quite apparent. In addition the Government of Liberia desires to emphasize the fact that the two conventions which are most explicit on the point deal in fact with aspects of maritime safety.

The provisions of both the Convention of Safety of Life at Sea, 1929 [4], and the Load Line Convention, 1930 [5], are expressed to apply to ships "belonging to countries the Governments of which are contracting Governments". Each Convention contains, moreover, the following definition: "a ship is regarded as belonging to a country if it is registered at a port of that country".

The Convention for the Unification of Certain Rules relating to Maritime Mortgages and Liens, 1926, also indicates that registration is the connecting factor between a vessel and the State to which it belongs. Article 1 provides as follows:

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[1] Jenks, *op cit.*, p. 252.

[2] United Nations *Treaty Series*, Vol. 38, p. 315; Hudson, *International Legislation*, Vol. 3, p. 1981.

[3] League of Nations *Treaty Series*, Vol. 86 (1929), p. 246, and p. 326.

[4] Article 2 (1). League of Nations *Treaty Series*, Vol. 136, p. 81; Hudson, *International Legislation*, Vol. IV, p. 2724. This Convention has now been replaced by the Convention for the Safety of Life at Sea, 1948. See above p. 43.

[5] Article 2 (1). League of Nations *Treaty Series*, Vol. 135, p. 301; Hudson, *op. cit.*, Vol. V, p. 635.

"Mortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel's registry or at a central office, shall be regarded as valid and respected by all other contracting parties.[1]"

The same is true of the International Convention for a Uniform System of Tonnage Measurement of Ships, of June 6, 1947[2], which uses the expression "any ship which belongs to ... another party..." and does so in a context, namely, the use in the same article of the concept of "transfer", which makes it clear that registration is the criterion the use of which the article anticipates.

There remain four classes of multilateral convention which may also be mentioned in this context.

In the first place, there is a group of conventions which employ the simple genitive case to describe the connection between a State and the vessels which are attributed to it. Thus, the Statute on the International Regime of Maritime Ports, 1923, provides in Article 2 that "every Contracting State undertakes to grant the vessels of every other Contracting State equality of treatment with its own vessels"[3]. Conceivably, on their face, those words might be construed as extending the benefits of the Convention to ships not registered in the territory of a party, but nevertheless within the national ownership of a party. There appears, however, to be no evidence to support this construction.

However, the Statute may, in this respect, be compared with the International Convention for the High Seas Fisheries of the North Pacific Ocean, 1952. By Article IX (2): "Each Contracting Party agrees ... to enact and enforce necessary laws and regulations with regard to its nationals and fishing vessels..."[4] In this case, the simple genitive is coupled with an assertion of jurisdictional competence which can only exist in the case of vessels, as is shown above, when such vessels are registered in the territory of a State.

In short, in at least one case, the simple genitive has clearly referred to the relationship of registration, while, in the other instances, there is no evidence that it was intended to apply, or has in practice been applied, on any other basis than registration.

Secondly, there are a number of conventions which employ the expression "vessels flying the flag of the State" or a variant thereof to describe the connecting factor between the vessel and the State. One example is provided by the Barcelona Statute on the Regime of Navigable Waterways of International Concern, 1921.

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[1] League of Nations *Treaty Series*, Vol. 20, p. 189.

[2] *British and Foreign State Papers*, Vol. 152, p. 345.

[3] League of Nations *Treaty Series*, Vol. 58, p. 286. See also the Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, 1946. Article 4 states that "... the provisions of this Convention shall apply to all vessels of any Contracting Government...".

[4] United States *Treaty Series*, Vol. 4, p. 380.

> *Article 3.* "... each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any one of the other Contracting States ... [1]"

In the third place, mention may be made of the International Convention for the Regulation of Whaling, 1946. This provides, in Article I (2), that the Convention shall apply to "factory ships, land stations and whale catchers under the jurisdiction of the Contracting Governments... [2]".

It is clear, in each of these latter two instances, that the test of registration must be employed for determining whether the vessel in question is entitled to fly the flag, or is under the jurisdiction, of the State which claims benefits on its behalf.

In the fourth place, considerable weight must be attached to those multilateral conventions which employ a possessive expression, such as "each with" or "having" and, in practice, regard the element of possession as satisfied by the connection of registration. For example, Article XV (1) of the International Convention for the Prevention of the Pollution of the Sea by Oil, of May 12, 1954, provides that

> "The present Convention shall come into force twelve months after the date on which not less than ten Governments have become

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[1] League of Nations *Treaty Series*, Vol. 7, p. 35. The following are a number of other examples:

Convention concerning the Simplification of the Inspection of Emigrants on Shipboard, 1926:

"*Article 3.* If an official inspector of emigrants is placed on board an emigrant vessel he shall be appointed as a general rule by the Government of the country whose flag the vessel flies..." (Hudson, *op. cit.*, Vol. III, p. 1898.)

Convention for the Regulation of Whaling, 1921:

"*Article 8.* No vessel of any of the High Contracting Parties shall engage in taking ... whales unless a licence authorizing such vessel to engage therein shall have been granted in respect of such vessel by the High Contracting Party whose flag she flies..." (*Ibid.*, Vol. V, p. 1081.)

Treaty on International Penal Law, 1940:

"*Article 8.* Crimes committed on the high seas, whether on board airplanes, men of war or merchant ships, must be tried and punished according to the law of the State whose flag the vessel flies." (*Ibid.*, Vol. VIII, p. 483.)

International Convention relating to the Arrest of Sea-going Ships, 1952:

"*Article 8 (i).* The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State."

International Convention for the Unification of certain Rules relating to Penal Jurisdiction in matters of Collision or other Incidents of Navigation, 1952:

"*Article 1.* In the event of a collision or any other incident of navigation concerning a sea-going ship and involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, criminal or disciplinary proceedings may be instituted only before the judicial or administrative authorities of the State of which the ship was flying the flag at the time of the collision or other incident of navigation."

[2] United Kingdom, *Treaty Series* No. 5 (1949), Cmd. 7604.

parties to the Convention, including five Governments of countries each with not less than 500,000 gross tons of tanker tonnage."

It is understood that registration was adopted as the test for ascertaining the five Governments "*each with*" the required quantity of tonnage.

The same is true of the numerous conventions concluded under the auspices of the International Labour Organisation, which are expressed to come into force when a certain number of Members who "*have*" not less than one million tons of shipping have deposited their ratifications. For the purpose of determining whether a State does "have" the requisite tonnage, it appears that reference is made to the quantity of tonnage which appears upon its national register [1].

b. *Bilateral treaties.*

Examination of bilateral treaties also indicates that what is, in effect, the test of registration is practically universally accepted as the means of determining the State to which a vessel is attached. This is the only practical interpretation which can be placed upon the numerous clauses which identify vessels by reference to the laws of their nationality or to the papers which they carry. Identification of this kind excludes completely any investigation of the ownership of the vessel.

The Government of Liberia has been unable to find a single instance of a treaty made in the present century in which the parties indicated any desire to go behind the test of registration [2]. The general tendency in treaties of friendship, commerce and navigation is to provide that vessels shall be considered as vessels of a Contracting State if they are vessels under the flag of one Contracting State which carry with them documents prescribed under its municipal law or provide evidence of nationality.

The practice of States in the form of bilateral treaties has been closely analysed by Professor Rienow in *The Test of the Nationality of a Merchant Vessel* [3]. After an examination of treaties to which Great Britain, France, the Netherlands and the United States had become parties with other States, in which he shows that the nationality of a vessel is normally determined, for treaty purposes, by reference to her registration, he concludes, in a passage which merits quotation, as follows:

"No treaty of any other State in which ownership was held to be the test of nationality of a vessel has come to the attention of the

[1] For example, see Appendix I, below, items 16, 17, 18, 20 and 21.

[2] However, Rienow, *The Test of the Nationality of a Merchant Vessel* (1937), cites two treaties of 1825 and 1840 between Great Britain and Colombia and Bolivia respectively in which it was agreed that vessels to be "national" must be of national ownership. He comments on these two examples in the following terms: "The numerical insignificance is, however, the strongest denial of the worth of these two treaties as any indication of international law." (*Op. cit.*, p. 94.)

[3] New York, 1937.

author. A careful study of the treaties of the maritime States during the twentieth century fails to reveal a single case in which national ownership was mentioned in conjunction with nationality. With the exception of a few treaties employing the phraseology introduced by Great Britain in 1850, all of them state specifically by what token the nationality of a vessel is to be made apparent...

It may be said that the practice of States as exemplified by their treaties offers but negligible evidence, in the form of a single treaty between the United States and the Congo, that a State in order to sustain its claim to the rights of nationality over a vessel need aver the national ownership of the vessel. Thus, in the light of treaties to which it is a party, no State can deny that a vessel belongs to another State because the ownership is not vested in the nationals of the latter [1]."

3. *Registration and the practice of I.M.C.O.*

In the third place, the Government of Liberia submits that considerable weight should be attached to the practice of I.M.C.O. itself as demonstrating that "registration" is the test implicit in the reference to "ship-owning nations".

a. *Practice as an aid to interpretation.*

The propriety of recourse to the practice of the parties to a treaty as an aid to interpretation is now well established in the jurisprudence of the Court [2].

Thus, in the Advisory Opinion on the *Competence of the International Labour Organisation with respect to Agricultural Labour*, the Permanent Court of International Justice observed that "if there were any ambiguity [in Part XIII of the Treaty of Versailles],

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[1] Rienow, *op. cit.*, pp. 99-100. At pp. 18-21, the author gives a list of bilateral treaties concluded prior to 1937 in which nationality is determined by the documents borne by the vessel and not by reference to any such test as ownership.

In Appendix I, attached to this Statement, extracts are printed from a number of bilateral treaties connected with maritime matters which illustrate the use of registration, either *eo nomine*, or by reference to the papers of the vessel, as the appropriate factor for connecting a vessel to a State.

[2] The same principle is, of course, well established in the municipal laws of various States. Reference may be made in this connection to the following statement of the *rationale* of the rule by the Supreme Court of the United States of America in the case of *Insurance Co.* v. *Dutcher:*

"The practical interpretation of an agreement by a party to it is always a consideration of great weight. The construction of a contract is as much a part of it as anything else. There is no surer way to find out what parties meant than to see what they have done. Self-interest stimulates the mind to activity, and sharpens its perspicacity. Parties in such cases often claim more, but rarely less, than they are entitled to. The probabilities are largely in the direction of the former. In considering the question before us, it is difficult to resist the cogency of this uniform practice during the period mentioned, as a factor in the case." (95 U.S. Reports 269.)

For further authorities in relation to interpretation of treaties, see the Harvard Law School, Research in International Law, *Draft Convention on the Law of Treaties, American Journal of International Law*, Vol. 29 (1935).

the Court might, for the purpose of arriving at the true meaning, consider the action which has been taken under the Treaty" [1].

Again, the relevance of the practice of an organization as an aid to interpretation is clearly demonstrated by a passage from the Advisory Opinion of the Court on the *Competence of the General Assembly for the Admission of a State to the United Nations*. The Court, having decided, by reference to the text of Article 4, paragraph 2, of the Charter of the United Nations, that the General Assembly could not admit a State to the United Nations in the absence of a recommendation to that effect from the Security Council, followed that conclusion by a statement of the previous practice of the General Assembly which, in the circumstances, indicates that the Court regarded reference to such practice as a permissible aid to interpretation. The Court said:

> "The organs to which Article 4 entrusts the judgment of the Organization in matters of admission have consistently interpreted the text in the sense that the General Assembly can decide to admit only on the basis of a recommendation of the Security Council [2]."

b. *The relevant elements in the practice of I.M.C.O.*

There are four elements in the practice of I.M.C.O. to which the Government of Liberia would invite attention in this connection.

i. *Article 60 and the entry into force of the Convention.*

Article 60 of the Convention provides that it "shall enter into force on the date when 21 States of which 7 shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties...". There is no indication in the Article that registration shall be the test of whether States "have" tonnage for this purpose. It is, therefore, significant that when determining whether the terms of this Article were satisfied, the test employed was in fact that of registration. Moreover, no question was then, or has since been, raised as to the applicability of that test.

ii. *Election to the Maritime Safety Committee.*

It is also a fact of considerable importance that the basis of the very election, the validity of which is now in dispute, was a list of registered tonnages drawn by the Secretariat from Lloyd's *Register of Shipping*. The Government of Liberia believes that the use of such a list was necessary and unavoidable and that it contained the proper criterion for adoption by the Secretariat of I.M.C.O. and the general body of Members for the determination of the respective size of ship-owning nations. It is, in the view of the Government of Liberia, significant that this test was actually followed for the purposes of the election to the Maritime Safety Committee, with the sole exception of the unwarranted discrimination against

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[1] *P.C.I.J., Series B, No. 2, at p. 40.*
[2] *I.C.J. Reports 1950, No. 4, at p. 9.*

Liberia and Panama in refusing to follow the dictates of the list in relation to them. Apart from this exception, this conduct of the Assembly constituted forceful acknowledgment that registered tonnage is the criterion which the parties intended to be reflected by the words "the largest ship-owning nations".

iii. *Apportionment of contributions to the budget.*

The third element in the practice of I.M.C.O. which shows both the convenience of the use of the list of registered tonnages and the general willingness of the Assembly to use it, even in situations involving Liberia, is that of the distribution of the burden of financial contribution.

It is convenient, in demonstrating this point, first to mention the terms of the Resolution adopted by the Assembly on January 19, 1959[1], on the Apportionment of Expenses among Member States, which was recommended by the Administrative and Financial Committee[2]; and then to review the discussions which preceded the adoption of the Resolution.

The significant feature of the Resolution is the extensive reliance which it places upon the concept of gross registered tonnage. Each Member is required to contribute "a basic assessment" determined by the percentage of its contribution to the budget of the United Nations. There is also a further obligation on each Member to contribute "an additional assessment determined by its gross registered tonnage as shown in the latest edition of Lloyd's *Register of Shipping*, on the basis of one share for each 1,000 tons".

On this basis, which the Government of Liberia was perfectly content to accept as reflecting its status as an important ship-owning nation, the contribution of Liberia to the budget assessment of I.M.C.O. is $16,278 per annum, consisting of a basic assessment of $2,000 and an additional assessment, based on the possession of over 10 million tons of registered shipping, of $14,278. Liberia is thus called upon to bear 6.87% of the budget assessment of the Organization. In addition, Liberia's contribution to the I.M.C.O. Working Capital Fund (calculated solely on the same percentage) is $3,435. Thus, Liberia's total contribution for the first working year is $19,713. This may be compared with the following figures which indicate the percentage of the budget borne by Liberia in other international organizations: the United Nations, the Food and Agriculture Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, 0.04%; the International Civil Aviation Organization, 0.13%; and the International Labour Organisation, 0.12%. In other words, the Liberian contribution to I.M.C.O. is about fifty times greater than its largest contribution to any other international organization.

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[1] IMCO/A.1/SR.12, p. 5.
[2] IMCO/A.1/Working Paper 16.

Throughout the discussion relating to the apportionment of finance, the criterion of gross registered tonnage played a central part. The terms in which this debate took place are set out in the accompanying footnote [1].

The Government of Liberia is anxious to emphasize not only that the Administrative and Financial Committee relied upon the criterion of gross registered tonnage but also that it did so in terms which made it plain that Liberia was regarded as being one of the largest Members by reference to this criterion. It was not, for example, suggested by any Member that an attempt should be made to go behind the figures of Liberia's gross registered tonnage, despite the fact—as may be seen from the statements cited in the footnote—that a number of Members regarded tonnage as indicative of the extent of the interest which a Member had in the Organization. Even when the delegate of Liberia enquired whether, in the view of Liberia's inadequate representation in the different organs of the Organization (the election of the Maritime Safety Committee having taken place two days previously), it was really fair that his country *should contribute 7% or 8% of the Organization's budget* [2], the only reaction came from the delegate of Norway who suggested that Liberia and Panama should be exempt from the supplementary percentage based on tonnage [3]. However, no Member showed any disposition to pursue this suggestion and the solution ultimately

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[1] Although a number of schemes of apportionment were discussed, the factor of gross registered tonnage was present in each of them.

Thus it appeared in a "Possible Scale of Assessments" prepared by the Secretariat (IMCO/A.1/AF Working Paper 3).

It appeared again in a proposal made by the United States which was based on a flat contribution of $3,000 and additional shares calculated according to tonnage ownership (IMCO/A.1/AF/SR.4, p. 3).

The delegate of the Netherlands employed it when advocating a different system based on the capacity of Members to pay, as applied by most of the other specialized agencies. His words in this connection are of special relevance:

"For instance, 75% of ICAO's budget was apportioned on that basis, and 25% according to *the interest of Member States in the aims of the organization. In the case of IMCO, that 25% could be assessed in accordance with tonnage ownership.*" (*Ibid.*, p. 4 (italics supplied).)

The delegate of the Soviet Union placed exclusive reliance upon it. He "maintained that apportionment of expenses among Member States should be founded upon tonnage ownership, *since States with the largest tonnages would receive the greatest benefits from the Organization*". (*Ibid.*, p. 5 (italics supplied).)

Even the delegate of the United Kingdom said that assessment "based on capacity to pay, did not seem suitable for a technical agency concerned solely with shipping; some account must be taken of tonnage". (*Ibid.*, p. 6.)

Similar views were repeatedly expressed by the delegate of Canada, who said:

"The amount required to make up the total budget would be obtained by assessment on the basis of tonnage. Such a method would give some recognition to capacity to pay as well as to the interests and benefits derived." (*Ibid.*, p. 8. See also, *Ibid.*, p. 9, and IMCO/A1/AF/SR.5, p. 2.)

[2] IMCO/A.1/AF/SR.6, pp. 3-4.

[3] *Ibid.*, p. 4.

adopted by the Assembly [1] was based on the assumption that Liberia was obliged to contribute by reference to her actual gross registered tonnage.

Unless the practice of the Organization is to be regarded as imposing on certain Members second class rights coupled with first class obligations—which is an inherently improbable conclusion trespassing on the concept of equality of States in international law—there is compelling force in the contention that if registered tonnage can be used as the criterion for establishing *pro rata* contributions it was also intended to be used as the criterion for determining size as a "ship-owning nation".

iv. *Elections to the Council.*

Despite the fact that less specific standards are laid down for the establishment of the Maritime Safety Committee under Article 28 *(a)* than are laid down for the composition of the Council under Article 17 *(c)*, it is still pertinent to refer to the manner in which reliance was placed in the I.M.C.O. Assembly upon the function of registered tonnage in determining the composition of the latter. Article 17 *(c)* provides that two members of the Council "shall be elected by the Assembly from among the governments of nations having a substantial interest in providing international shipping services". Appendix I to the I.M.C.O. Convention further provides that, for the first Council, the two Members to be elected by the Assembly under Article 17 *(c)* shall be elected "from a panel nominated by the six members named in paragraph *(a)* of this Appendix". Those six States are Greece, the Netherlands, Norway, Sweden, the United Kingdom and the United States.

The following is the relevant part of the Summary Record of the speech made by the representative of the United Kingdom (Sir Gilmour Jenkins) in transmitting to the Assembly the recommendations of the six Members:

> "The representatives of ... [the six Members] had therefore examined the claims of countries having a substantial interest in providing international shipping services. They did not feel that they should propose to the Assembly a long list of candidatures, as two countries clearly surpassed the others in the size of their tonnage; they recommended the election of Japan (with tonnage of about 5,500,000 tons) and of Italy (with a tonnage of nearly 5,000,000). [2]"

The Summary Record continues with the following passage:

> "In reply to Mr. Weeks (Liberia), Sir Gilmour Jenkins stated that it had not been possible to consider the case of Liberia as that country was not a member at the time of the meeting. [3]"

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[1] IMCO/A.1/AF/SR.6, p. 5.

[2] I.M.C.O. Assembly, First Session, Summary Record of the Third Meeting, January 7, 1959, IMCO/A.1/SR.3, pp. 2-3.

[3] *Ibid.*, p. 3.

The significance of these observations is twofold: in the first place, they show that even for the purpose of determining whether a State has a substantial interest in the provision of international shipping services, the test of registration was adopted as the appropriate criterion. For it may be noted, if reference is made to the Secretary-General's List of Tonnages, Japan and Italy can be seen to be the largest States in terms of tonnage not already to have been nominated to the Council. Secondly, the sole reason adduced by the United Kingdom representative for the non-consideration of Liberia was the fact that at the time of the meeting of the six named States, Liberia had not joined I.M.C.O. No suggestion was made that the tonnage under her flag (which was accepted as the relevant criterion for Japan and Italy) was for any reason not entitled to recognition.

On this basis Japan and Italy were unanimously elected members of the Council [1].

4. *Registration and the shipping situation in 1946.*

Some consideration should also be given to the position prevailing at the time when the I.M.C.O. Convention was drafted.

The terms of an international convention should be construed in the light of the situation of law and fact prevailing at the time when it was drawn up. For this proposition—which has been termed as "the principle of contemporaneity"—there is clear authority in the jurisprudence of the Court. Thus, in the Judgment in the *Case concerning Rights of Nationals of the United States of America in Morocco* [2], the Court, when construing the word "dispute", said: "... it is necessary to take into account the meaning of the word 'dispute' at the times when the two treaties were concluded" [3].

Although the I.M.C.O. Convention was not formally adopted until 1948, it appears from the records of the Transport and Communications Commission of the Economic and Social Council of the United Nations [4] that the Convention first took its present shape in 1946. Certainly the expression "the largest ship-owning nations" appears in Article VII (1) of the draft Convention prepared by the United Maritime Consultative Council prior to its dissolution in October 1946 [5].

[1] I.M.C.O. Assembly, First Session, Summary Record of the Third Meeting, January 7, 1959, IMCO/A.1/SR.3, p. 3.

[2] *I.C.J. Reports 1952*, p. 176.

[3] *Ibid.*, p. 189. The principle is examined by Sir Gerald Fitzmaurice in "The Law and Procedure of the International Court of Justice, 1951-1954", *British Year Book of International Law*, 33 (1957), at pp. 225-227. In his own comment Sir Gerald states: "Not to take account of contemporary practice and circumstances, and to interpret such treaties according to modern concepts, would often amount to importing into them provisions they never really contained, and imposing on the parties obligations they never actually assumed."

[4] See *Economic and Social Council, Official Records, Second Year: Fourth Session. Supplement No. 8*, p. 8.

[5] *Ibid.*, p. 44. Article VII (1) of the draft provided as follows:

"The Maritime Safety Committee shall consist of fourteen Member Governments selected by the Assembly from the Governments of those nations having

The importance of the date at which the Convention was drafted lies in this fact: in 1946 the situation which has since occasioned the attack in I.M.C.O. upon the Governments of Liberia and Panama had not developed in any significant respect. In these circumstances, it seems highly improbable that the draftsmen of the Convention would have attempted to grapple with a question which, in relation to shipping, was then really non-existent. It seems equally improbable, if they had intended to abandon the use of registration as the connecting factor between a vessel and a State, that they would have failed to use the clearest and most explicit language or that they would have continued to employ language so similar to that previously employed for invoking the very relationship which they would have been seeking to abandon.

It need hardly be added that if the Court accepts the view that at the time the I.M.C.O. Convention was drafted the intention of the parties was to invoke the concept of registration, then, as the Court has itself stated in the past, it may not now revise the Convention in a manner which, if the voting on the election of Liberia to the Maritime Safety Committee is any guide [1], would not satisfy more than half the parties to the Convention. Indeed, in its Advisory Opinion on the *Interpretation of the Peace Treaties with Bulgaria, Hungary and Romania (Second Phase)*, the Court said: "It is the duty of the Court to interpret the treaties, not to revise them [2]."

5. *The solution of analogous problems by express language: I.C.A.O.*

In the fifth place, it is pertinent that the draftsmen failed to use some expression other than "ship-owning nation" if the criterion of connection which they had in mind was something other than registration. As the Government of Liberia understands the position, there would have been only one reason for abandoning the test of registration, namely, that the draftsmen wished to ensure that in every case the size of the ship-owning nation should be determined not by a formal requirement but by the quantity of tonnage beneficially owned by the nationals either directly or as beneficial shareholders in corporations. In these circumstances, the object of the draftsmen would not have been secured if their language were construed merely as requiring that the vessels should be owned by nationals of each State. That would have left open two possibilities: either that the vessels might be owned by companies incorporated in the territory of a member, despite the fact that the shares in and effective control of the company might

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an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be selected so as to insure adequate representation of other nations with important interests in maritime safety and of major geographical areas..."

[1] See above, pages 36, 37 and 39.

[2] *I.C.J. Reports 1950*, p. 221, at p. 229.

rest in non-nationals of that State [1]; or that the vessels might be mortgaged or under bareboat charter on a long-term basis to a non-national interest [2].

Consequently, it would have been reasonable for the draftsmen if they had wished to avoid the risk of the use of such a criterion as registration to employ express words to achieve that end, rather than use so general a provision as "ship-owning nations".

The force of these observations is strengthened when it is appreciated that this very problem had already arisen and been dealt with in the field of air transport in the form of what is known as "the substantial ownership and effective control" clause. The first use of this clause in a multilateral instrument is in Article I (5) of the International Air Services Transit Agreement concluded at Chicago in 1944. This provides as follows:

> "Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State..."

A similar provision appears in Article I (6) of the International Air Transport Agreement of the same date. In addition, since that time, the insertion of a similar clause has been a persistent feature of the numerous bilateral air service agreements which have been concluded between States on a basis of reciprocity.

The origin of these clauses has been traced by a leading authority on the law of the air to the Pan-American Conference at Lima in 1940 [3]. At that time, the purpose of inserting the clause in air transit agreements was to prevent companies owned and controlled by German nationals, but registered in South American States, from operating in the Panama Canal Zone. It was a deliberate modification of the normal rule, relating to the recognition of registration, which was deemed to be justified by the special requirements of international air transit [4].

The relevance to the present situation of the specific treatment of the problem of substantial ownership and effective control in the field of civil aviation may be stated in the following terms:

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[1] See, for example, the statement made by Professor H. A. Smith on the effect of the United Kingdom law relating to registration:

> "English law requires the complete legal ownership to be vested in British subjects, but this requirement is of less value than might appear, since it does not exclude ownership by a company in which the controlling interest is held by foreigners." (*Law and Custom of the Sea* (2nd ed., 1950), p. 49.)

[2] As is well known, a conspicuous feature of shipping practice for many years has been and still remains that of financing the construction of vessels by means of loans secured by mortgages and charges both on the vessels and their earnings. These earnings are in large part ensured by means of the conclusion of long-term charters. It need hardly be added that the financing of the vessels, as well as their chartering, frequently involves corporations of diverse nationalities.

[3] See Goedhuis, "Questions of Public International Air Law", *Hague Recueil*, Vol. 81 (1952-II), at p. 213.

[4] Goedhuis, *op. cit.*, p. 215.

i. In the first place, with the I.C.A.O. precedent so recently before them, it seems improbable, if the draftsmen of the I.M.C.O. Convention had intended to achieve the same end, that they would have used such vague terminology.

ii. A second consideration is that, in contrast with the situation prevailing in relation to the constitution of the Maritime Safety Committee, the primary reason for inserting the "substantial ownership and effective control" clause into the Air Transit Agreement was in order to preserve the balance of contractual concessions involved in the reciprocal grant of air transit rights. In the absence of such motivation, it is more readily understandable why the draftsmen of the I.M.C.O. Convention did not seek to insert provisions of the same degree of particularity in the instrument with which they were concerned.

6. *Considerations of convenience and the absence of machinery of investigation.*

A further consideration which may be adduced in favour of registration as being the appropriate connecting factor between a State and a vessel is that of convenience. Registration is explicit and it is easily verified. The convenience of employing it as the connecting factor when determining the comparative size of States is demonstrated by the reliance placed upon it in shipping statistical tables (such as those published in connection with the Suez and Panama Canals), registers of shipping and comparisons in shipping publications, etc. As a criterion it is clearly a great deal more convenient than ownership, especially if attempts are made to deal with questions of corporate ownership, or to take into consideration the position of mortgagees or of long-term bareboat charterers. In the absence, therefore, of clear words, there is no reason to assume that the draftsmen intended to abandon a test which has come to form so frequent a feature of international practice in this sphere.

There is another point of some importance which should be made in this connection. The reference in Article 28 *(a)* to the eight "largest ship-owning nations" may be compared with the use of quantitative criteria in other contexts, such as Article 17 of the I.M.C.O. Convention and Article 7 (2) of the Constitution of the International Labour Organisation.

There can, of course, be no real doubt that when quantitative criteria are set out in an instrument it is the intention of the draftsmen that the discretion of States should proportionately be limited. However, practice has shown that where such criteria are necessarily imprecise, they cannot satisfactorily be applied without the interposition of some fact-finding machinery. Thus, Article 17 of the I.M.C.O. Convention requires that a certain number of members of the Council shall be "governments of the nations with the largest interest in providing international shipping services" and that some also shall be the governments of nations with "the

largest interest in international sea-borne trade". The determination of those Members who satisfy these criteria is, by Article 18, expressly vested in the Council—a provision which strongly suggests that those matters were felt to be too complex to be dealt with satisfactorily by the fact-finding processes of each Member acting individually.

The same is also true of Article 7 (2) of the Constitution of the International Labour Organisation. This states that "Of the sixteen persons representing Governments [in the Governing Body], eight shall be appointed by the Members of chief industrial importance...". The next paragraph provides as follows:

> "3. The Governing Body shall as occasion requires determine which are the Members of the Organisation of chief industrial importance and shall make rules to ensure that all questions relating to the selection of the Members of chief industrial importance are considered by an impartial Committee before being decided by the Governing Body."

By contrast, no fact-finding organ is employed in relation to the determination of "the largest ship-owning nations" in Article 28 *(a)* for the purposes of the composition of the Maritime Safety Committee. This is not because it was intended to grant Members an absolute discretion (for that would make nonsense of the enumeration of conditions), but rather, it must be assumed, because the criterion mentioned in Article 28 was regarded by the draftsmen as one which was so readily ascertainable that no need for the use of an investigating organ would arise. If, as is submitted, this interpretation of the position is correct, then it is clear that the only objective test which could thus be applied would be either registration or nominal ownership.

7. Travaux préparatoires *as an aid to interpretation.*

Finally, the Government of Liberia believes that it may be helpful to refer briefly to the *travaux préparatoires* leading to the conclusion of the I.M.C.O. Convention. In so doing, it is, nevertheless, conscious of the observations which the Court has made in the past about the permissibility of recourse to preparatory work.

On the whole, the written records of the conferences leading up to the adoption of the I.M.C.O. Convention are, with one exception, of little assistance.

The respect in which the *travaux préparatoires* are of some help is the following: from the outset, it was apparent that the inclusion in the Maritime Safety Committee of the largest ship-owning nations was deemed to be a question of very great importance. In an English text prepared in September, 1946, by the Committee on the possible Constitution for the intergovernmental maritime organization, Article VII, Section 2 (the equivalent of present Article 28 *(a)*) was worded so as to read: "The Maritime Safety

Committee shall consist of 12 Member Governments selected by the Assembly from the Governments of those nations having an important interest in maritime safety and owning substantial amounts of merchant shipping, of which no less than nine shall be the largest ship-owning nations... [1]"

The Committee report contained the following comments: "The Maritime Safety Committee, as proposed, will include the largest ship-owning nations. This is of great importance to its successful operation. [2]" The minutes of the sixth meeting of the Council (1946) show that the United States proposal under which "not less than nine shall be the largest ship-owning nations" was the subject of discussion as to the minimum number of representatives from the "largest ship-owning nations" but not as to the importance of using that standard.

The whole proposal was fully discussed at a meeting of the United Nations Maritime Conference held at Geneva, February 19-March 6, 1948. There the delegation of the United Kingdom made clear its position in saying that: "What was essential was that the Organization's recommendation should have the support of the countries which were called upon to implement them, otherwise they would be valueless [3]."

Apart from the above-mentioned exception, the general mode in which the Article achieved its present shape, when considered in conjunction with the whole tenor of the debates [4] on the Article, suggests that the conclusion to be drawn from the *travaux préparatoires* in the present instance is the same as that reached by the Permanent Court of International Justice in the Advisory Opinion on the *Competence of the International Labour Organisation with respect to Agricultural Labour*. In that case, the Court found, upon an examination of the records of the development of Part XIII of the Treaty of Versailles, that "there is certainly nothing in the *travaux préparatoires* to disturb the conclusion" of the Court [5].

At the time same, the absence of any specific contribution by the *travaux préparatoires* to the interpretation of "the largest ship-owning nations" may itself be a factor of some significance. It suggests that the phrase was not merely regarded by its draftsmen as being clear and non-controversial, but was also accepted in the two preparatory conferences. In view of the cogent considerations set out earlier in this Statement in favour of the view that registration would have been the normal and obvious test to employ for determining what a "ship-owning nation" is, it is permissible to infer

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[1] United Maritime Committee Council, Washington, D.C. UMCC 2/2, October 14, 1946, p. 6.

[2] *Ibid.*, p. 11.

[3] United Nations document E/CONF. 4/SR. Revised, p. 27.

[4] The details of the development of Article 28 *(a)* from the first draft to its present form are set out in Appendix II to the present Statement.

[5] *P.C.I.J., Series B*, Nos. 2 and 3, p. 41.

from the silence of the parties on the question that they did not intend to depart from an interpretation which was plain as well as convenient.

C. *The question of alternative criteria*

References in speeches of Members to other criteria for the determination of the size of a ship-owning nation were so lacking either in clarity, consistency or detail as not to call for or even permit reply. It is the position of the Government of Liberia that the application of the criterion of registration is so clearly and unmistakably called for that other criteria are necessarily excluded. Nevertheless, should this question be considered further by other Members in the course of their Statements, the Government of Liberia would wish to be allowed to submit its own comments upon them. At the same time, the Government of Liberia should not be regarded as admitting that Members who gave reasons during the debates in the Assembly for their line of conduct are free to invoke in the present proceedings arguments which they did not advance or may not have contemplated during the relevant debates of the Assembly.

III. "An Important Interest in Maritime Safety"— Its Limited Relevance

The Government of Liberia has so far been discussing the meaning of the words "the largest ship-owning nations". It is now necessary to turn to some consideration of the phrase "an important interest in maritime safety" which also appears in the first part of Article 28 *(a)* as a consideration bearing on the election of Members to the Maritime Safety Committee.

The postponement of the examination of this phrase until after the discussion of the expression "the largest ship-owning nations" is deliberate. It reflects the opinion of the Government of Liberia that, as used in relation to the election of the eight "largest ship-owning nations", the reference to an important interest in maritime safety of these States plays a distinctly limited role.

The expression "an important interest in maritime safety" is, manifestly, a vague one. It is, for example, much broader than comparable descriptions which appear in the Constitution of the International Labour Organisation, such as "the States of chief industrial importance" for the purpose of defining those States which are accorded a special place in the Governing Body, or "the most representative" bodies of employers and workers which States are obliged to consult in nominating their non-governmental delegates.

Accordingly, in view of the difficulty of endowing the expression "an important interest in maritime safety" with some absolute definable content, the Government of Liberia believes that an

appreciation of the significance of the expression may be approached in either of the two following ways:

A. *Special conditions override general ones*

In the first place, the Government of Liberia considers that this is a case for the application of the rule that specific conditions in an instrument should be treated as overriding general ones. This is not merely a matter of general law; it is also required by the wording of Article 28 *(a)*.

As to the general law, the problem of the relationship between the concepts of "an important interest in maritime safety" and of the eight "largest ship-owning nations" is comparable with the question considered by the Court in the Advisory Opinion on *Admission of a State to the United Nations* [1]. The Court was invited to find in the general statement of the responsibilities and powers of the Security Council contained in Article 24 of the Charter of the United Nations a power to override the specific requirements for admission laid down in Article 4 of the Charter. As to this, the Court said:

> "It has been sought to base on the political responsibilities assumed by the Security Council, in virtue of Article 24 of the Charter, an argument justifying the necessity for according to the Security Council as well as to the General Assembly complete freedom of appreciation in connexion with the admission of new Members. But Article 24, owing to the very general nature of its terms, cannot, in the absence of any provision, affect the special rules for admission which emerge from Article 4 [2]."

In the present case, it may be said that the specific words "of which not less than eight shall be the largest ship-owning nations" bear to the general words "having an important interest in maritime safety" the same relationship as Article 24 of the Charter was held to bear to Article 4. The reference to "an important interest in maritime safety" cannot thus override the effect of the reference to size as a "ship-owning nation".

Alternatively, the wording of Article 28 *(a)* itself may be regarded as attributing a predominant effect to the requirement that, of the fourteen Members to be elected to the Maritime Safety Committee, "not less than eight *shall* be the largest ship-owning nations". As stated above, the expression "an important interest in maritime safety" is a vague one. It seems inherently improbable that the draftsmen of the Convention could have intended so broad a term as "an important interest" to override the mandatory effect of the use of the word "*shall*" and of the definite article "*the*" in connection with an objectively verifiable fact, namely, the size of registered tonnage.

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[1] *I.C.J. Reports 1948*, p. 57.
[2] *Ibid.*, p. 64.

B. *The largest ship-owning nations, as a matter of construction, have an important interest in maritime safety*

Secondly, once it is established as a matter of fact that a State is one of the eight largest ship-owning nations, it is difficult to see how in law it can be said that it does not have an important interest in maritime safety.

One factor of relevance in this connection is that the "interest" referred to is clearly an interest at a national level rather than at a private one. It refers to the interest of the State as such and not to the interest which particular individuals may have. This, it is believed, clearly follows from the indication given in relation to the "six", that a nation has an important interest in maritime safety if it is "interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers" [1]. Clearly, then, a State which is included among the eight largest ship-owning nations by reference to registry and which by reason of such registration is internationally responsible for one of the eight largest national fleets must, in all reason, be regarded as having an important interest in maritime safety [2].

Indeed, any State with vessels registered within its territory must have some interest in maritime safety merely because it is obliged to make and enforce regulations on board such vessels. An example of this may be seen in the practice of Liberia itself. Liberia has, for instance, an elaborate system of rules and regulations connected with maritime safety.

The Liberian Government enforces strict compliance with the detailed requirements of international conventions on maritime safety to which Liberia is a party. To insure proper maintenance of Liberian vessels, periodic inspections by competent qualified inspectors are required.

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[1] As an example of the meaning attributed to the concept of "an important interest in maritime safety" by at least one delegation, reference may be made to the observation of Mr. Weston (the delegate of the United Kingdom) made at the United Nations Maritime Conference in 1948 in connection with a proposal by the Pakistan and Indian delegates for the addition to Section 1 of Article 28 (then numbered VII) of the words "and of nations with the important interests in the supply of crews and in the transport of berthed and unberthed passengers" after the words "so as to ensure adequate representation of other nations with important interests in maritime safety and of major geographical needs". The United Kingdom delegate said "that the words 'other nations with important interests in maritime safety' had been included in the U.M.C.C. draft precisely in order to provide for the representation of the nations interested in providing crews, and the view had been accepted by the Working Party". (E/CONF.4/SR. Revised, p. 77.)

The above remarks may be contrasted with those made by the United Kingdom delegate, Mr. Faulkner, at the eighth meeting of the First Assembly of I.M.C.O. *on January 15, 1959, when he referred to the lack, on the part of the Government* of Liberia, of expert knowledge and experience in maritime safety matters. (IMCO/A1/SR.8, p. 3.)

[2] Needless to say, without the inclusion of the largest ship-owning nations, it would be unrealistic to expect that the important objectives of the Maritime Safety Committee could be accomplished.

Section 30 of the Liberian Maritime Law adopts the non-statutory maritime law of the United States of America in so far as it does not conflict with the specific provisions of such law. This provides a "common law" background which would not otherwise have been available because of the more recent appearance of Liberia as a maritime power.

Liberia has a growing body of statutory law governing seaworthiness, manning and social matters. The Liberian merchant fleet, generally conceded to be amongst the world's finest, is largely made up of vessels built since the war in the best shipyards and according to the latest design embodying the most carefully considered safety requirements. These vessels are manned by fully qualified seamen and officers chosen principally from the older maritime nations, but subject always to strict Liberian licensing requirements.

All these matters are more fully described under the heading of "The Liberian Maritime Programme" which appears as Appendix III to this Statement.

As a matter of simple logic, the more ships which a Member regulates in this way, the more important is its interest in maritime safety. In short, there is a clear and compelling connection between status as one of the eight largest ship-owning nations and the possession of an important interest in maritime safety. As a matter of law, the latter is deemed to follow upon the former.

This close connection between status as one of the eight largest ship-owning nations and the possession of an important interest in maritime safety is not merely obvious; it is one the validity of which was quite clearly recognized by a number of members of I.M.C.O. in a different, but directly related, context. During the debates in the Administrative and Financial Committee on the apportionment of the Budget several Members expressly related the interest of a Member in the objects of the Organization to the size of the Member's figures of registered tonnage. Thus, the Netherlands delegate, having referred to the practice of I.C.A.O. and stated that 25% of the budget was apportioned according to the interest of Member States in the aims of the Organization, said: "In the case of IMCO, that 25% could be assessed in accordance with the tonnage ownership.[1]" The delegate of the Soviet Union also observed that "States with the largest tonnages would receive the greatest benefits from the Organization.[2]" The delegate of Canada in explaining his proposal that contributions should be assessed by reference both to the scale of contributions to the United Nations and to tonnage figures, said:

> "Recognition has been given to the principle of capacity to pay [in the form of the reference to the United Nations contributions

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[1] IMCO/A.1/AF/SR.4, p. 4. See also note on p. 51, above, for the same quotations.
[2] *Ibid.*, p. 5.

scale], and at the same time to the interest and benefits of members [as reflected, no doubt, in their tonnage figures] [1]."

There is no reason why the general interest in the objects of I.M.C.O. thus acknowledged to be reflected in the tonnage figures should not, in relation to a particular aspect of the work of the Organization, also constitute an interest in that particular matter. Consequently, if a State's interest in the objects of I.M.C.O. is proportionate to its tonnage, it follows that the State with the third largest tonnage must have the third largest interest in maritime safety. If that is not an "important" interest, it is difficult to give the word "important" any objective meaning whatsoever.

IV. Effects of the Correct Interpretation of Article 28 (a)

Once it is established that the size of a ship-owning nation is determined by the quantity of registered tonnage, then Liberia, as one of the eight largest ship-owning nations, was entitled to election. The failure of the Assembly to elect Liberia means that the Maritime Safety Committee is not validly constituted.

The Government of Liberia considers that the enumeration in Article 28 *(a)* of the conditions relative to election to the Maritime Safety Committee is exhaustive. No valid distinction in this respect can be drawn between Article 28 *(a)* of the I.M.C.O. Convention and Article 4 (1) of the Charter of the United Nations. And just as the Court held in the Advisory Opinion on *Admission of a State to the United Nations* [2] that the conditions listed in the latter article were exhaustive, so the Government of Liberia considers that the same conclusion must be reached in respect of the former. Certain observations made by the Court in its Opinion are equally applicable in the present instance:

> "The provision would lose its significance and weight, if other conditions, unconnected with those laid down, could be demanded. The conditions stated in paragraph 1 of Article 4 must therefore be regarded not merely as the necessary conditions, but also as the conditions which suffice [3]."

It follows from the exhaustive character of any enumeration of conditions that further requirements cannot validly be added to them. This point also was the subject of specific consideration by the Court, in the Advisory Opinion referred to above, in words which call for extended quotation:

> "Nor can it be argued that the conditions enumerated represent only an indispensable minimum, in the sense that political considerations could be superimposed upon them, and prevent the admission of an applicant which fulfils them. Such an interpretation would be

[1] Words in parentheses added.
[2] *I.C.J. Reports 1948*, p. 57, at p. 62.
[3] *Ibid.*, p. 62.

inconsistent with the terms of paragraph 2 of Article 4, which provides for the admission of "*tout État* remplissant ces conditions"—"any *such* State". It would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions. Such a power would be inconsistent with the very character of paragraph 1 of Article 4 which, by reason of the close connection which it establishes between membership and the observance of the principles and obligations of the Charter, clearly constitutes a legal regulation of the question of the admission of new States. To warrant an interpretation other than that which ensues from the natural meaning of the words, a decisive reason would be required which has not been established.

Moreover, the spirit as well as the terms of the paragraph preclude the idea that considerations extraneous to those principles and obligations can prevent the admission of a State which complies with them. If the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the conditions laid down therein, they would undoubtedly have adopted a different wording [1]."

These views of the Court in the *Admission*'s case are equally applicable in the present situation; and it follows that Members of I.M.C.O., when electing States to the Maritime Safety Committee, are not entitled to add to or vary the conditions set out in Article 28 *(a)*.

At this point, however, the resemblance between the *Admission*'s case and the present situation terminates. In particular, there is no occasion in the present case for acknowledging, as the Court did in the *Admission*'s case, that "an appreciation" is allowed "of such circumstances of fact as would enable the existence of the requisite conditions to be verified" [2]. The reason why, in the *Admission*'s case, the Court admitted a right of members to take "into account any factor which it is possible reasonably and in good faith to connect with the conditions laid down" [3] in Article 4 was the special or "political" character of those conditions. "The taking into account of such factors is implicit in *the very wide and very elastic nature of the prescribed conditions;* no relevant political factor—that is to say, none connected with the conditions of admission—is excluded. [4]"

The situation in the present case is entirely different. Registration is not a political condition; it is a simple matter of objectively ascertainable fact. In this respect it differs entirely from the criteria enumerated in Article 4 of the Charter of the United Nations, that the candidate be a "State" or "peace-loving" or "able and willing" to carry out its obligations. If a right of appreciation or assessment of "registration" is superimposed upon registration itself as the criterion for determining size, in fact the criterion of registration is

[1] *I.C.J. Reports 1948*, pp. 62-63.
[2] *Ibid.*, p. 63.
[3] *Ibid.*
[4] *Ibid.* Italics supplied.

being abandoned in favour of the criterion by which the validity of the registration is being tested.

The point may be put in another way. Article 4 of the Charter of the United Nations leaves it to "the judgment of the Organization" to determine whether a State is able and willing to carry out its obligations under the Charter. Such ability and willingness cannot exist apart from the judgment of the Organization. Registration, on the other hand, is a unilateral fact. It does not depend upon acknowledgment by other States. If to it there is added, for example, the requirement that there must be some additional connection between the vessel and the State of registration, this is to substitute the additional connection for the test of registration. For the reasons set out above, the Government of Liberia deems a substitution of this character to be impermissible.

Since it is the duty of any organ of an international institution and, in the last analysis, of the Members themselves [1], to observe the treaty provisions "when they constitute limitations on its powers or criteria for its judgment" [2], the Government of Liberia submits that, in all the circumstances set out above, there has been a breach of the duty to elect to the Maritime Committee two nations which, in virtue of the quantity of their registered tonnage, were entitled to such election. For this reason the Maritime Safety Committee cannot be said to have been constituted in accordance with the I.M.C.O. Convention.

Part III

The Constitutional Law of the Organization

The Government of Liberia now turns to elaborate the second ground on which it contends that the Maritime Safety Committee was not constituted in accordance with the I.M.C.O. Convention. This ground, in brief, is that the States participating in the election to the Marine Safety Committee did not exercise the powers conferred upon them by Article 28 *(a)* of the I.M.C.O. Convention in a manner conformable with the general constitutional law of the Organization.

It is the contention of the Government of Liberia that the legality of the conduct not only of the organs of international institutions but also of the Members themselves in relation to the activities of such institutions is governed as well by general rules of international constitutional law as by the express terms of the constituent instrument of the organization. These general rules are to be found by employing the same processes as are normally used for the deter-

[1] See the Advisory Opinion on *Admissions*, referred to above, in which, at p. 62, the Court says: "The judgment of the Organization means the judgment of the two organs mentioned in paragraph 2 of Article 4, and, in the last analysis, that of its Members."

[2] *Ibid.*, p. 64.

mination of rules of international law. Having regard to the character of the rules in question, they must be sought primarily in the practice of international organizations and in general principles of law drawn from the concordant aspects of various systems of municipal administrative law.

Support for a proposition of this character is implied in the terms of the principal advisory opinions rendered by the Court in connection with international constitutional questions, such as the opinions on *Admission of a State to the United Nations* [1], *Reparation for Injuries suffered in the service of the United Nations* [2], *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* [3], *South-West Africa—Voting Procedure* [4], and *Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the UNESCO* [5].

The general rule upon which the Government of Liberia relies is that when the Court is requested, as it is in the present instance, to consider the legality of an election held by and organ of an international institution, it is entitled and bound to approach the problem in much the same way as would a municipal tribunal invited to take under judicial review the exercise by any authority of the powers with which it may be vested [6].

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[1] *I.C.J. Reports 1948*, p. 57.
[2] *I.C.J. Reports 1949*, p. 174.
[3] *I.C.J. Reports 1954*, p. 47.
[4] *I.C.J. Reports 1955*, p. 67.
[5] *I.C.J. Reports 1956*, p. 77.
[6] There can be no real doubt that the conduct of the election to the Maritime Safety Committee falls within the scope of the question on which the opinion of the Court is sought. Although the Court is asked whether the Maritime Safety Committee is constituted in accordance with the terms of the I.M.C.O. Convention, that wording does not restrict the Court to an examination of the provisions of the I.M.C.O. Convention alone. The Court may examine the composition of the Maritime Safety Committee by reference to both the substantive and the procedural requirements of the I.M.C.O. Convention; and although the I.M.C.O. Convention does not in terms refer to the requirements which are examined above, it is contended that by operation of law such requirements are to be treated as if they formed part of the I.M.C.O. Convention.

The position is, in effect, analogous to that considered by the Court in the Advisory Opinion on the *Judgments of the Administrative Tribunal of the I.L.O.* (*I.C.J. Reports 1956*, p. 77.)

The issue in that case was whether the I.L.O. Administrative Tribunal was competent to hear complaints introduced against U.N.E.S.C.O. by certain members of the staff of the latter. By the terms of Article II, paragraph 5, of its Statute, the Administrative Tribunal was granted competence "to hear complaints alleging non-observance in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations...". Nevertheless, despite the apparent limitation of the competence of the Tribunal to complaints alleging non-performance of *written* instruments—the terms of appointment and the provisions of the Staff Regulations—the Court held that the Tribunal was competent to hear complaints based upon the conduct of the Director-General of U.N.E.S.C.O., upon general considerations relating to the international civil service and upon the practice of international organizations. The Court, in short, held that a grant of a power to review the validity of conduct by reference to conformity with a written instrument carried with it the power to examine such conduct also in the light of

There has, in this connection, both in international and municipal practice, developed a body of standards for determining whether powers or discretions [1] have been validly exercised. In the present case, the Government of Liberia submits that the election to the Maritime Safety Committee on January 15, 1959, departed from these standards in three respects:

(i) There was, in the first place, a procedural defect in the election in that either those members of I.M.C.O. who voted against Liberia voted in a manner inconsistent with the evidence of size of the various ship-owning nations placed before them; or they acted arbitrarily in voting without reference to any evidence whatsoever.

(ii) Secondly, in at least one important aspect, there was a failure on the part of the majority to act in a manner that can objectively be regarded as reasonable and not arbitrary; and

(iii) Finally, there was a *détournement de pouvoir*—a failure on the part of fourteen Members who voted against Liberia to exercise their powers in accordance with the purposes implicit in Article 28.

Each of these defects in the election is by itself sufficient to prevent the Maritime Safety Committee elected on January 15, 1959, from being validly constituted in accordance with the Constitution of I.M.C.O.

In submitting, as it does, that the Court has a right to review the manner in which the Members of I.M.C.O. exercised the power of election provided for in Article 28 *(a)* of the I.M.C.O. Convention, the Government of Liberia does not, of course, suggest that the Court has the right to substitute its own discretion for that of the Members. A submission of this character would be difficult to support by reference to analogous situations in either the international or the municipal spheres; nor is it necessary to the case of the Government of Liberia for it to extend its submission so far. The limit of its proposition is that the Court is entitled and bound to examine the manner in which the decision taken by the Assembly was reached. If the Court finds that the process by which Members

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rules of law associated with the instrument. As the Court said: "In order to denote the competence of the Administrative Tribunal, it is necessary to consider these contracts not only by reference to their letter but also in relation to the actual conditions in which they were entered into and the place which they occupy in the organization." (*Ibid.*, p. 91.)

Therefore, as it was in the case of the competence of the I.L.O. Administrative Tribunal, so it is in the present instance: a determination of whether the Maritime Safety Committee has been constituted in accordance with the I.M.C.O. Convention involves also a determination of whether that Committee has been constituted in accordance with the general law of the Organization.

[1] The Government of Liberia should not, of course, be taken as admitting that, in respect of the election of "the eight", the Members of I.M.C.O. possessed any discretion in the technical sense of the word.

determined the identity of the States which were to serve as "the eight" members of the Maritime Safety Committee did not meet the requirements elaborated below, then the Court should hold that the Maritime Safety Committee was not constituted in accordance with the I.M.C.O. Convention.

I. The Rules controlling the Exercise of Powers

A. *The duty to act on the basis of and in accordance with evidence*

The Government of Liberia believes that it is a proposition generally accepted and applied that where a body is entrusted with a power which may be exercised by reference to certain objectively determinable criteria, that power may not be exercised in the absence of sufficient evidence as to the existence of the criteria to form a reasonable basis for the exercise of the power. Alternatively, where the power is exercised after taking into account irrelevant considerations or failing to take into account relevant ones, the exercise of the power must be regarded as invalid.

The process of judicial review of situations involving allegations of inadequacy of evidence is, it may be noticed, one which is directed to a question of law, not to a question of fact. The Court does not substitute its discretion for that of the authority vested with the discretion. It merely determines whether the conduct of the parties falls within the scope of the powers which they enjoy. The matter was put in very clear terms by an eminent English judge, Du Parcq, L. J. (later Lord Du Parcq), then sitting in the Court of Appeal in *Bean* v. *Doncaster Amalgamated Collieries, Ltd.*

He said:

> "This view of the matter may be expressed by saying that, when once the facts have been ascertained, then only one answer to the question posed can be right. Opinions may differ, but that is not to say that more than one of the differing opinions can be correct. Unless the Commissioners, having found the relevant facts and put to themselves the proper question, have proceeded to give the right answer, they may be said, on this view, to have erred in point of law. If an inference from facts does not logically accord with and follow from them, then one must say that there is no evidence to support it. *To come to a conclusion which there is no evidence to support is to make an error in law.* [1]"

Other aspects of the proposition have on a number of occasions been laid down in terms by the English courts. Thus, in *Re Bowman* [2], Swift, J., in explaining the grounds on which the courts might quash the exercise of a discretion by a local authority, said:

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[1] [1944] 2 All E.R. 279, at p. 284. Italics supplied.
[2] [1932] 2 K.B. 621, at p. 634.

"There may some day arise a case ... in which it may be said that there was no material, no information, and no representation before the local authority upon which they could, as reasonable people, possibly be satisfied that a clearance order ought to be made."

This was approved and followed by the present Lord Chief Justice of England in *Goddard* v. *Minister of Housing and Local Government* [1].

Reference may also be made to a recent and authoritative work devoted to a consideration of the exercise of powers in English law. Professor de Smith, in his *Judicial Review of Administrative Action*, summarizes the position in English law in the following terms:

"If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations, a court will hold that the power has not been validly exercised, unless the jurisdiction of the courts to interfere has been excluded [which, of course, is not the case in the present instance]. It is, of course, immaterial that an authority may have considered irrelevant matters in arriving at its decision if it has not allowed itself to be influenced by those matters. The influence of extraneous matters will be manifest if they have led the authority to make an order that is invalid *ex facie*, or if the authority has set them out as reasons for its order or has otherwise admitted their influence. In other cases, the Courts must determine whether their influence is to be inferred from surrounding circumstances. If the influence of irrelevant factors is established, it does not appear to be necessary to prove that they were the sole or even the dominant influence; it seems enough to prove that their influence was substantial. For this reason ... there may be a practical advantage in founding a challenge to the validity of a discretionary act on the basis of irrelevant considerations rather than improper purpose, though the line of demarcation between the two grounds of invalidity is often imperceptible. [2]"

The power of the Courts in the United States of America is, if anything, even broader in this respect than is that of the tribunals in England. American courts will review administrative findings which are not supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" [3].

A similar power of review of the facts is asserted in the French system of administrative law. M. P. L. Josse, at one time president of the first *sous-section* of the *Conseil d'État*, after observing that originally the *Conseil d'État* left to the judge of first instance a considerable latitude of appreciation, described the later development in that tribunal in the following terms:

"... enfin [le Conseil d'État] se rendant compte que le pouvoir qu'il voulait se réserver était le plus souvent illusoire, a porté directement

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[1] [1958] 3 All E.R. 482.

[2] Pp. 203-204. Words in parentheses added.

[3] *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229 (1938).

son examen sur les faits eux-mêmes, recherchant d'un point de vue objectif s'ils justifiaient la solution de droit: ce qui a entraîné comme conséquence l'obligation faite au juge subordonné de motiver sa décision en relevant les faits servant de soutien à son appréciation. [1]"

B. *Reasonableness*

The doctrine that discretionary powers must be exercised reasonably is also one which is common to a number of systems of law.

It was, for example, applied by the United Nations Administrative Tribunal in the case of *Julhiard* [2]. Under Staff Rule 104-8 the Secretary-General was called upon to decide the nationality of a staff member by determining the State with which he was "most closely associated". In relation to this power of the Secretary-General, the Tribunal said:

> "That being so, the Tribunal can, without substituting its judgment for that of the Secretary-General, consider whether, having regard to the circumstances, it was reasonable for the Secretary-General to conclude that the Applicant was most closely associated with one State rather than with another. [3]"

The Tribunal did, in fact, decide in that case that "the links are such that, in the exercise of his discretionary power, it was reasonable for the Respondent to conclude that ... the United States is the State with which the Respondent is most closely associated. [4]" Nevertheless, the case, which is not an isolated one, stands as evidence for the principle that the evidence upon which a discretion has been exercised may be reviewed by a tribunal for the purpose of determining whether the discretion has been reasonably exercised.

The same principle is reflected in the following statement which represents the position in Italian law:

> "*Travisamento dei fatti* acquires the character of *eccesso di potere* when the conclusions appear to be in striking contradiction with the premises, or are drawn from facts which stand in flagrant contradiction with the evidence or are the direct result of having neglected circumstances which are essential to the decision of the dispute. [5]"

The classic statement of the rule relating to the requirement of reasonableness in English administrative law is now contained in the following passage from the judgment of Lord Greene, M. R., in *Associated Provincial Picture Houses Ltd* v. *Wednesbury Corporation* [6].

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[1] *Livre jubilaire* 161, 173, as cited in Hamson, *Executive Discretion and Judicial Control* (1954), p. 175.

[2] *Judgments of the United Nations Administrative Tribunal, 1950-1957*, No. 62, p. 340.

[3] At p. 349.

[4] *Ibid.*

[5] 24 August 1905, n. 409, *La Giustizia Amministrativa*, 196, I, 439, as quoted in Galeotti, *Judicial Control of Public Authorities in England and Italy* (1954), p. 131.

[6] [1948] 1 K.B. 223.

"It is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L. J. in *Short* v. *Poole Corporation*, [1926] Ch. 66, 90, 91, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

C. *Détournement de pouvoir*

It is frequently difficult to distinguish between those cases in which exercises of discretion have been quashed on the ground of lack of evidence and those quashed as being unreasonable or arbitrary. Equally it is not always easy to draw a clear line between those two types of defect and the third class to which the Government of Liberia now turns—*détournement de pouvoir*. This arises when a power, conferred primarily for one purpose, is exercised in a manner compatible with its terms, but in fact alien to its true objects..

This principle of the invalidity of a *détournement de pouvoir* may be found in the jurisprudence both of international and municipal administrative tribunals, and is one which commends itself by its inherent reasonableness for application as a general principle of law.

The principle has been clearly and repeatedly stated by the Administrative Tribunal of the United Nations. A leading illustration of the view of the Tribunal on this question is provided by the terms of its award in the case of *Mauch*. With reference to the power of the Secretary-General to terminate temporary-indefinite appointments "in the interest of the United Nations", the Tribunal declared:

"While the measure of power here was intended to be left completely within the discretion of the Secretary-General, this would not authorize an arbitrary or capricious exercise of the power of termination, nor the assignment of specious or untruthful reasons for the action taken, such as would connote a lack of good faith or due consideration for the rights of the staff member involved. [1]"

[1] *Judgments of the United Nations Administrative Tribunal, 1950-1957*, No. 54, p. 266, at p. 272.

In at least sixteen other instances of a similar character the Tribunal used an almost identical formula:

> "Such discretionary powers must be exercised without improper motives so that there shall be no misuse of power, since any such misuse of power would call for the rescinding of the decision. [1]"

The doctrine of *détournement de pouvoir* also finds a place in the jurisprudence of the European Coal and Steel Community. Although express provision is made in Article 33 of the Treaty establishing the Community for recourse to this concept, there is no reason to believe that this provision is anything more than declaratory of one of the grounds on which the Court of the Community, once it was granted a power of review, could find decisions of the High Authority to be unlawful.

The Court of the Community has in a number of decisions determined that for a *détournement de pouvoir* to be established it must be shown that the major or dominant reason for taking a particular decision was improper [2].

There is no doubt that a similar principle exists in English law. It has been clearly and forcefully stated by Lord Justice (now Lord) Denning in the case of *Earl Fitzwilliam's Wentworth Estate Co. Ltd.* v. *Minister of Town and Country Planning* in the following terms:

> "... But sometimes the validity of an act does depend on the purpose with which it is done ... and in such a case, when there is more than one purpose, the law always has regard to the dominant purpose. If the dominant purpose of those concerned is unlawful, then the act done is invalid, and it is not to be cured by saying that they had some other purpose in mind which was lawful...
>
> So also the validity of government action often depends on the purpose with which it is done. There, too, the same principle applies. If Parliament grants a power to a government department to be used for an authorized purpose, then the power is only validly exercised when it is used by the department genuinely for that purpose as its dominant purpose. If that purpose is not the main purpose, but is subordinated to some other purpose which is not authorized by law, then the department exceeds its powers and the action is invalid. The department cannot escape from this result by saying that its motive is immaterial. Just as its real purpose is crucial, so also is its true motive, because they are one and the same thing. [3]"

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[1] *Judgments of the United Nations Administrative Tribunal, 1950-1957*, No. 54, at pp. 68, 75, 79, 84, 87, 94, 99, 104, 108, 113, 213, 218, 222, 236, 241 and 246.

[2] See *French Republic* v. *High Authority of the European Coal and Steel Community, Official Gazette of the European Coal and Steel Community*, 4 (1955), p. 22; *International Law Reports*, 1954, p. 309. See also *Government of the Italian Republic* v. *The High Authority, Official Gazette*, etc., *loc. cit.*, p. 23; *International Law Reports*, 1955, p. 737; and *Government of the Kingdom of the Netherlands* v. *The High Authority, Official Gazette*, etc., *loc. cit.*, p. 119; *International Law Reports*, 1955, p. 750.

[3] [1951] 2 K.B. 284, at p. 307. Although Denning L. J.'s judgment was a dissenting one, the above quoted statement of principle does not represent a point of difference between him and his colleagues.

The concept of *détournement de pouvoir* is, of course, also well known in French law. The *Conseil d'État* will read into a statute, framed in general terms and apparently giving an unlimited discretion, a special and limited purpose; and it will quash as a *détournement de pouvoir* the use of the power or discretion not clearly directed to the attainment of the purpose thus read into the statute [1].

The doctrine exists also in Italian law, where the position has been set out in the following terms by an Italian authority carrying out a comparative study of judicial control of public authorities in England and Italy:

> "An administrative act may be challenged on the ground of *sviamento di potere*, when the public authority had exercised its power in cases and for purposes other than those for which it was given by law. In such a case, the administrative decision may issue from the public authority, within the boundaries of its province, and in compliance with all legal requirements, but it is not according to the purpose intended by law. [2]"

He continues:

> "The circumstance that the public authority had exercised its powers *bona* or *mala fide* has no bearing on the existence of *détournement de pouvoir*. To make a case of *détournement de pouvoir*, it is sufficient that the public authority has pursued an object different from the one which is allowed by law. The way in which it is disclosed is irrelevant to the existence of this ground of challenge. Whether it is apparent on the face of the proceedings being stated in the reasons for the act, or whether it may be detected only by the supporting evidence, whether the different object is openly declared or whether it is concealed under a pretence of the one which alone is permitted in law has no bearing on the fact of its exercise. All those cases are brought under one and the same heading of *sviamento di potere*, as a particular type of *eccesso di potere*. [3]"

The operation of these principles in Italian law may be illustrated by the following examples. In the case of *Fracchia* v. *Min. Pubblica Istruzione* it was held that the transfer of a schoolteacher, made *ex officio* by the educational authority, was unlawful, as being a *détournement de pouvoir*, when it appeared that the decision had been made not on real grounds of an educational kind, but on considerations relating to the particular interests of the transferred teacher. The order was challenged by those other teachers whose interests were affected by the fact that a post had thus been filled

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[1] See the case of *Tabouret et Laroche*, C.E. (Ass.), July 9, 1943; D. 1945. J. 163; and the comment by Hamson, *Executive Discretion and Judicial Control* (1954), p. 167.

[2] Galeotti, *The Judicial Control of Public Authorities in England and Italy* (1954), pp. 109-110.

[3] *Ibid.*, p. 111.

which would otherwise have been open to competition [1]. Again, in *Bruno* v. *Ente Naz. Educ. Fisica*, it was held that the dismissal of a civil servant, formally for reasons connected with the improvement of the civil service, but in reality for disciplinary reasons, was unlawful. A factor in the case was that normally disciplinary matters were dealt with in a different way, with special safeguards for the servant [2].

D. *The relevance of "good faith"*

The Government of Liberia should perhaps observe that the defects in the exercise of a power, as referred to above, can perfectly well occur without any imputation of bad faith (in its less pleasant sense) to the party at fault. As Professor de Smith points out, in respect of English law, "A discretionary power may be abused in good faith or in bad faith" [3]. The same is true of Italian law. Thus Dr. Galeotti states the position as follows:

> "The circumstance that the public authority had exercised its powers *bona* or *mala fide* has no bearing on the existence of *détournement de pouvoir*. To make a case of *détournement de pouvoir*, it is sufficient that the public authority has pursued an object different from the one which is allowed by law. [4]"

In these circumstances the Government of Liberia considers that the Court may determine that the election to the Maritime Safety Committee was void for the reasons set out above without requiring a finding of bad faith on the part of those States that voted against Liberia.

However, within these limitations, some reference to the doctrine of good faith as developed by the Court is relevant as supporting generally the propositions of law set out above. The Court has, in the past, expressly re-affirmed the importance of "good faith" in the performance of treaty obligations, as for example in the Advisory Opinion on *Admission of a State to the United Nations* [5]. However, it seems improbable that the Court intended to refer to a technical concept of "good faith" which could only be negatived by proof of the existence of an equally technical "bad faith", in the sense of dishonesty, fraud or malice. The improbability of the conduct of States being open to description in these terms is equalled only by the practical impossibility of proving such bad faith. Consequently, unless some wider meaning can be attributed to "good faith", "the reservation for the case of bad faith is", to employ the words of Lord Radcliffe, "hardly more than a formality" [6]. Since it seems unlikely that the Court would have regarded

[1] *La Giurisprudenza Italiana*, 1929, p. 175, as cited in Galeotti, *op. cit.*, p. 111.
[2] *Il Forro Amministrativo*, 1929, I, 1, 234.
[3] *Judicial Review of Administrative Action* (1959), pp. 190, 199-200.
[4] *The Judicial Control of Public Authorities in England and Italy* (1954), p. 111.
[5] *I.C.J. Reports 1948*, p. 57.
[6] *Nakkuda Ali* v. *Jayaratne*, [1951] A.C. 66, at p. 77.

the concept of "good faith" as a mere formality, it becomes reasonable to assume that "good faith" does in fact bear some wider meaning than the opposite of dishonesty, fraud or malice. The Government of Liberia submits that, in the context of international administrative law, the only effective content to be attributed to the concept of "good faith" is that of regarding it as a generalization of the particular rules referred to above. Thus, the requirement of good faith in the exercise of a power demands that the party exercising the power act only on the basis of adequate evidence, reject irrelevant evidence, act reasonably and use his powers only for the purpose for which they were intended.

II. The Violation of the Rules

The Government of Liberia considers that the rules referred to above have been violated in three distinct respects by the Members who voted against Liberia and that, in consequence, the Maritime Safety Committee cannot be regarded as constituted in accordance with the I.M.C.O. Convention.

A. *Determination of the largest ship-owning nations on insufficient evidence*

In the first place, the failure to elect Liberia and Panama to the Maritime Safety Committee shows that Members apparently regarded themselves as free to employ some criterion other than registration for the purpose of determining the size of a ship-owning nation. On the assumption that registration is not the correct criterion (which assumption is, of course, not admitted), then Members must be deemed to have employed some particular criterion for determining the eligibility of the first eight States elected to the Maritime Safety Committee. Were this not the case, then the choice of such members must be regarded as a matter falling within the absolute discretion of Members—a position which is in law quite incompatible with the fact that Article 28*(a)* contains relevant restrictive conditions.

On this basis, what criterion could Members have employed? For reasons already stated, the Government of Liberia does not consider that it need speculate upon the possibilities. But for present purposes speculation is irrelevant. The fact is that the Assembly had before it no evidence on the basis of which it could possible apply any test other than that of registration. The only information with which it had been provided was the Secretary-General's List of Registered Tonnages. It had also been informed by the delegate of Liberia that of the tonnage registered under the Liberian flag a sufficient quantity was actually owned by Liberian nationals or companies to bring Liberia within the eight largest

ship-owning nations, even if the test of size was "ownership by nationals" [1]. This statement was never contradicted.

In short, if criteria other than registration were employed (and it must be deemed that some single criterion was) then there was no evidence either that Liberia was not among the eight largest ship-owning nations or that the States in fact elected were, by contrast, among the eight largest ship-owning nations.

B. *Assessment of "An important interest in Maritime Safety"*
Insufficient evidence: Unreasonableness

The second violation of the rules set out above relates to the requirement of "an important interest in maritime safety". The Government of Liberia has already contended that this expression does not create a condition capable of overriding the rights of a State which satisfies the requirement that it be one of the eight largest ship-owning nations. However, should the Government of Liberia be wrong on this point, it considers that any vote which turned on a discretionary determination that Liberia did not have an important interest in maritime safety must be regarded as having been taken in the face of contradictory evidence and as being unreasonable. After all, what evidence was there before the Assembly that any Member had an important interest, or even any interest, in maritime safety? On what information could States have formed a view upon this question? If the matter was not to be determined quite arbitrarily, some objective fact must have been of relevance; and that fact, as so many States conceded, is the fact of registration. For it is only by the power over a vessel which flows from the fact of registration that a State can implement its obligations in respect of maritime safety. Appendix III, already referred to, shows clearly the class of matter which falls within the notion of maritime safety. While it is not attached to this Statement primarily for the purpose of proving that Liberia has such an interest, for it is the contention of the Government of Liberia that that is not the question before the Court, it does in fact show that, like other maritime nations, Liberia is active in the discharge of the responsibilities which attach to the State in which vessels are registered. But there was no statement of this character, or any other evidence, before the Assembly on which the Members could have formed an estimate of the degree of interest in maritime safety possessed by the candidates for election to the Maritime Safety Committee.

C. *Détournement de pouvoir*

Thirdly, the Government of Liberia impugns the composition of the Maritime Safety Committee on the ground that, in all the

[1] See the terms of the draft resolution read out by Mr. Weeks (the delegate of Liberia) at the eighth meeting of the Assembly on January 15, 1959 (IMCO/A.1/SR.8, p. 7).

circumstances, the exercise of their vote by the fourteen members of I.M.C.O. who voted against Liberia constituted a *détournement de pouvoir*. In the view of the Government of Liberia, the election was tainted from the outset by the improper motive of a number of the participants. That motive was to transform an otherwise uncontroversial matter, namely, the election of the Maritime Safety Committee, into an attack upon the so-called "flags of convenience".

The delegate of the Netherlands explained the reasons for his conduct in terms which can leave no doubt as to their lack of relevance to the purposes for which the Maritime Safety Committee was constituted. He said that "... his Government had made abundantly clear on many occasions that it deplored the institution of the so-called flags of convenience". Then, referring to the amendments to the United Kingdom resolution which had been proposed by the delegation of Liberia in an attempt to safeguard her rights, he concluded:

> "Adoption of the amendments would be tantamount to accepting the institution of flags of convenience. For that reason he would vote against the amendments. [1]"

The delegate of the United Kingdom said much the same thing when, at the very outset of the debate, he declared that "it would be wrong for the Assembly when discussing it (the election), to pretend to ignore the essential difficulty, namely, the special position of Liberia and Panama" [2]. His next sentence—"There was clearly no question of dealing with the problem of flags of convenience, which lay outside the limit of that discussion"—does nothing to diminish the impression created by the first sentence that while the competition of non-traditional flags could not be directly disposed of by the Assembly, the United Kingdom was determined to strike at Liberia and Panama in any context in which opportunity might present itself.

The United Kingdom delegate was, indeed, unable either to disguise his true objective of furthering national economic and commercial objectives or to rationalize his conduct in terms of the Convention. The fact remains that those who concerted to exclude Liberia and Panama were seeking, in total disregard of their legal obligations, to substitute for an accepted international standard an unexpressed and undefined alternative. Yet the substitution of this alternative, for all its lack of precision, cannot be regarded as anything other than a surreptitious amendment of the I.M.C.O. Convention—a modification which is permissible only within the framework and in accordance with the methods laid down in Part XIV of the Convention; and not otherwise.

In short, the Government of Liberia submits that the observations of the delegates of the United Kingdom and of the Netherlands

[1] See Summary Record, Eighth Meeting, January 15, 1959, IMCO/A.1/SR.8, pp.2-3.
[2] *Ibid.*, Seventh Meeting, January 14, 1959, IMCO/A.1/SR.7, pp. 2-3.

indicate that their conduct was influenced not by a *bona fide* desire to determine, in the context of the advancement of maritime safety, what were the largest ship-owning States. They were instead dominantly motivated by the essentially irrelevant and consequently improper purpose of striking a blow at the non-traditional maritime nations. Moreover, as regards the other States which acted in concert with the United Kingdom and the Netherlands, it seems improbable that they cast their votes for reasons different in any material respect from those advanced by the delegations which appear to have taken the lead in this matter.

Final Conclusions

A. In the submission of the Government of Liberia, the Maritime Safety Committee elected on January 15, 1959, was not constituted in accordance with the I.M.C.O. Convention for the following principal reasons:

1. There was a failure to comply with the terms of Article 28 *(a)* of the Convention which require that the eight largest ship-owning nations shall be elected to the Committee, since Liberia, which is among the eight largest ship-owning nations, whether tested by the criterion of registration or of ownership by nationals, was not elected.
2. Alternatively, the election was invalidated by certain fundamental defects of procedure and by *détournement de pouvoir*.

B. The Government of Liberia submits that the Court should answer in the negative the question which has been put to it.

Declaration

The Government of Liberia takes the present opportunity of making the following declaration:

If the International Court of Justice decides that the Maritime Safety Committee elected on January 15, 1959, was not validly constituted in accordance with the I.M.C.O. Convention and if, in consequence, Liberia is enabled to take her rightful place on the Committee, the Government of Liberia will raise no question as to the validity of the work on maritime safety done within I.M.C.O. during the period prior to the date on which Liberia becomes a member of the Maritime Safety Committee.

APPENDICES

I. *International Treaties and Conventions*
II. *The Preparatory Work for the I.M.C.O. Convention*
III. *The Liberian Maritime Programme.*

Appendix I

EXTRACTS FROM TREATIES AND CONVENTIONS ILLUSTRATING THE USE OF REGISTRATION AS A CONNECTING FACTOR IN MARITIME MATTERS (See above, pp. 48-53) [1]

Table of Contents

A. Multilateral (in chronological order)

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[1] The following abbreviations have been employed in this Appendix:

L.N.T.S.—League of Nations *Treaty Series.*

U.N.T.S.—United Nations *Treaty Series.*

U.S.T.S.—United States *Treaty Series.*

U.S.T.I.A.S.—United States *Treaties and other International Acts Series.*

24. International Convention Relating to Stowaways, 1957.
25. Limitation of the Liability of Owners of Sea-going Ships, 1957.

B. *Bilateral* (in alphabetical order)

26. Argentine Republic—Brazil, 1940, Commerce and Navigation.
27. Belgium—USA, 1845, Treaty of Commerce and Navigation.
28. Belgium—USA, 1875, Treaty of Commerce and Navigation.
29. China—USA, 1946, Treaty of Commerce and Navigation.
30. Czechoslovakia—Poland, 1947, Communications Agreement.
31. Estonia—USA, 1925, Treaty of Commerce and Navigation.
32. Finland—USA, 1934, Treaty of Friendship, Commerce and Navigation.
33. Finland—USA, 1952, Double Taxation.
34. France—USA, 1939, Shipping and Aviation Taxation.
35. Germany—Italy, 1959, Treaty of Friendship, Commerce and Navigation.
36. Germany—USA, 1923, Treaty of Friendship, Commerce and Navigation.
37. Germany (Federal Republic)—USA, 1954, Treaty of Friendship, Commerce and Navigation.
38. Greece—Iran, 1931, Establishment, Commerce and Navigation.
39. Greece—Italy, 1948, Treaty of Friendship, Commerce and Navigation.
40. Greece—Lebanon, 1948, Treaty of Consular Representation, Navigation.
41. Greece—USA, 1951, Treaty of Friendship, Commerce and Navigation.
42. Greece—USA, 1959, Double Taxation on Income.
43. Honduras—USA, 1927, Friendship, Commerce and Consular Rights.
44. Iran—USA, 1955, Treaty of Friendship, Commerce and Navigation.
45. Ireland—USA, 1950, Treaty of Friendship, Commerce and Navigation.
46. Italy—Lebanon, 1949, Treaty of Friendship, Commerce and Navigation.
47. Italy—USA, 1948, Treaty of Friendship, Commerce and Navigation.
48. Japan—USA, 1911, Treaty of Commerce and Navigation.
49. Japan—USA, 1953, Treaty of Commerce and Navigation.
50. Korea—USA, 1956, Treaty of Commerce and Navigation.
51. Liberia—USA, 1938, Treaty of Commerce and Navigation.
52. Liberia—Germany, 1931, Treaty of Friendship, Commerce and Navigation.
53. Netherlands—USA, 1956, Treaty of Friendship, Commerce and Navigation.
54. Netherlands—USA, 1948, Double Taxation.
55. Nicaragua—USA, 1938, Double Taxation.
56. Norway—USA, 1928, Treaty of Friendship, Commerce and Consular Rights.
57. Paraguay—USA, 1859, Treaty of Friendship, Commerce and Navigation.

58. Spain—USA, 1902, Treaty of Commerce and Navigation.
59. Sweden—USA, 1939, Shipping and Aviation Income.
60. United Kingdom—Denmark, 1901, Fisheries, Färöe Islands and Iceland.
61. United Kingdom—Iran, 1959, Treaty of Commerce, Establishment and Navigation.
62. United Kingdom—USA, 1945, Double Taxation.
63. U.S.S.R.—Iran, 1940, Treaty of Commerce and Navigation.
64. U.S.S.R.—Yugoslavia, 1940, Treaty of Commerce and Navigation.

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1. *Treaty of Mannheim*, April 17, 1868 [1]

   "*Article 2.* (3) Sera considéré comme appartenant à la navigation du Rhin tout bateau ayant le droit de porter le pavillon d'un des États riverains, et pouvant justifier ce droit au moyen d'un document délivré par l'autorité compétente."

2. *Convention for Regulating the Police of the North Sea Fisheries*, May 6, 1882 [2]

   "*Article 5.* Les bateaux de pêche des Hautes Parties contractantes sont enregistrés d'après les règlements administratifs des différents pays..."

3. *Declaration recognizing the Right to a Flag of State having no Sea-Coast*, April 20, 1921 [3]

   "The undersigned, duly authorized for the purpose, declare that the States which they represent recognize the flag flown by vessels of any State having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels."

4. *Convention and Statute of the Regime of Navigable Waterways of International Concern*, April 20, 1921 [4]

   "*Article 3.* Subject to the provisions contained in Articles 5 and 17, each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any of the other Contracting States..."

5. *Convention (No. 21) relating to Simplification of the Inspection of Emigrants on Shipboard*, June 5, 1926 [5]

   "*Article 3.* If an official inspector of emigrants is placed on board an emigrant vessel he shall be appointed as a general rule by the Government of the country whose flag the vessel flies. Such inspector may, however, be appointed by another Government in virtue of an agreement between the Government of the country whose flag the vessel flies and one or more other Governments whose nationals are carried as emigrants on board the vessel."

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[1] De Martens, *Nouveau Recueil général*, 20, p. 355.
[2] De Martens, *Nouveau Recueil général*, 9, p. 556.
[3] *L.N.T.S.* 7, p. 73.
[4] *L.N.T.S.* 7, p. 35.
[5] *U.N.T.S.* 38, p. 281.

"*Article 5.* 1. The official inspector shall ensure the observance of the rights which emigrants possess under the laws of the country whose flag the vessel flies, or such other law as is applicable, or under international agreements, or the terms of their contracts of transportation.

2. The Government of the country whose flag the vessel flies shall communicate to the official inspector, irrespective of his nationality, the text of any laws or regulations affecting the condition of emigrants which may be in force, and of any international agreements or any contracts relating to the matter which have been communicated to such Government."

"*Article 7.* 1. Within eight days after the arrival of the vessel at its port of destination, the official inspector shall make a report to the Government of the country whose flag the vessel flies..."

6. *Convention (No. 23) concerning the Repatriation of Seamen*, June 23, 1926 [1]

"*Article 6.* The public authority of the country in which the vessel is registered shall be responsible for supervising the repatriation of any member of the crew in cases where this Convention applies, whatever may be his nationality, and where necessary for giving him his expenses in advance."

7. *Safety of Life at Sea Convention* (1929), May 31, 1929 [2]

"*Article 2.* Applications and Definitions:

1. The provisions of the present Convention shall apply to ships belonging to countries the Governments of which are Contracting Governments: and to ships belonging to territories to which the present Convention is applied under Article 62, as follows...

3. In the present Convention, unless expressly provided otherwise—

(a) A ship is regarded as belonging to a country if it is registered at a port of that country;

(b) The expression 'Administration' means the Government of the country in which the ship is registered;..."

8. *Load Line Convention* (1930), July 5, 1930 [3]

"*Article 2.* Scope of Convention.

1. This Convention applies to all ships engaged on international voyages, which belong to countries the Governments of which are Contracting Governments, or to territories to which this Convention is applied under Article 21, except..."

"*Article 3.* Definitions.

In this Convention, unless expressly provided otherwise—

(a) A ship is regarded as belonging to a country if it is registered by the Government of that country;

(b) The expression 'Administration' means the Government of the country to which the ship belongs;..."

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[1] *U.N.T.S.* 38, p. 315.
[2] *L.N.T.S.* 136, p. 81.
[3] *L.N.T.S.* 135, p. 301.

"*Article 9.* Survey.

The survey and marking of ships for the purpose of this Convention shall be carried out by officers of the country to which the ships belong... In every case the Government concerned fully guarantees the completeness and efficiency of the survey and marking."

"*Article 11.* Issue of Certificates.

... An International Load Line Certificate shall be issued by the Government of the country to which the ship belongs ... and in every case the Government assumes full responsibility for the certificate."

9. *Convention (No. 54) concerning Annual Holidays with Pay for Seamen,* October 24, 1936 [1]

"*Article 1.* 1. This Convention applies to the master, officers and members of the crew, including wireless operators in the service of a wireless telegraphy company, of all sea-going vessels, whether publicly or privately owned, which are registered in a territory for which the Convention is in force and are engaged in the transport of cargo or passengers for the purpose of trade.

2. National laws or regulations shall determine when vessels are to be regarded as sea-going vessels for the purpose of this Convention."

10. *Convention (No. 55) concerning Sickness, Injury or Death of Seamen,* October, 24, 1936 [2]

"*Article 1.* 1. This Convention applies to all persons employed on board any vessel, other than a ship of war, registered in a territory for which this Convention is in force and ordinarily engaged in maritime navigation."

11. *Convention (No. 56) concerning Sickness Insurance of Seamen,* October 24, 1936 [3]

"*Article 1.* 1. Every person employed as master or member of the crew or otherwise in the service of the ship, on board any vessel, other than a ship of war, registered in a territory for which this Convention is in force and engaged in maritime navigation or sea-fishing shall be insured under a compulsory sickness insurance scheme."

12. *Convention (No. 57) concerning Hours of Work on Board Ship and Manning,* October 24, 1936 [4]

Part. I.—Scope and Definitions

"*Article 1.* 1. This Convention applies to every seagoing mechanically-propelled vessel, whether publicly or privately owned, which —

(a) is registered in a territory for which the Convention is in force; ..."

13. *International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish,* March 23, 1937 [5]

"*Article 2.* The vessels to which the present Convention applies shall be the fishing vessels and boats, as defined in Annex V, registered or owned in the territories to which the Convention applies."

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[1] I.L.O. Conventions and Recommendations, 1919-1949, p. 371.
[2] *U.N.T.S.* 40, p. 169.
[3] *U.N.T.S.* 40, p. 187.
[4] I.L.O. Conventions and Recommendations, 1919-1949, p. 387.
[5] Hudson, *International Legislation,* Vol. VII, p. 642.

14. *Final Act of the International Fisheries Conference*, 1943 [1]

Chapter V.—Nationality, Registration and Identification of Fishing Vessels

"*Article 42.* 1. The vessels of each of the Contracting Parties shall be registered in accordance with the administrative regulations of that Party."

15. *Provisional Maritime Consultative Council*, October 30, 1946 [2]

Article 5 provides:

"This Agreement shall remain open for acceptance in the archives of the Government of the United Kingdom and shall enter into force when twelve Governments, of which five shall have a total tonnage of not less than 1,000,000 gross tonnage of shipping, have accepted it."

16. *Convention (No. 68) concerning Food and Catering for Crews on Board Ship*, June 27, 1946 [3]

"*Article 1.* 1. Every Member of the ILO ... is responsible for the promotion of a proper standard of food supply and catering service for the crews of its sea-going vessels, whether publicly or privately owned, which are engaged in the transport of cargo and passengers for the purpose of trade and registered in a territory for which this Convention is in force.

2. National Laws or regulations or, in the absence of such laws or regulations, collective agreements between employers and workers shall determine the vessels or classes of vessels which are to be regarded as sea-going vessels for the purpose of this Convention."

"*Article 5.* 1. Each Member shall maintain in force laws or regulations concerning food supply and certain arrangement designed to secure the health and well-being of the crews of the vessels mentioned in Article 1."

"*Article 6.* National laws or regulations shall provide for a system of inspection by the competent authority..."

"*Article 15.* (2) It shall come into force six months after the date on which there have been registered ratifications by nine of the following countries: ..., including at least five countries each of which has at least one million gross registered tons of Shipping..."

17. *Convention (No. 69) concerning Certification of Ships' Cooks*, June 27, 1946 [4]

"*Article 8.* (2) It shall come into force six months after the date on which there have been registered ratifications by nine of the following countries: ..., including at least five countries each of which has at least one million gross registered tons of Shipping."

18. *Convention (No. 73) concerning the Medical Examination of Seafarers*, June 29, 1946 [5]

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[1] H.M.S.O., Miscellaneous No. 5 (1943), Cmd. 6496.
[2] *U.N.T.S.* 9, p. 107.
[3] I.L.O. Conventions and Recommendations, 1919-1949, p. 605.
[4] I.L.O. Conventions and Recommendations, 1919-1949, p. 610.
[5] I.L.O. Conventions and Recommendations, 1919-1949, p. 633.

"*Article 1.* 1. This Convention applies to every seagoing vessel, whether publicly or privately owned, ... and is registered in a territory for which this Convention is in force.

2. National laws or regulations shall determine when vessels are to be regarded as sea-going."

"*Article 11.* 2. It shall come into force six months after the date on which there have been registered ratifications by seven of the following countries: ... including at least four countries each of which has at least one million gross registered tons of Shipping."

19. *Safety of Life at Sea Convention,* June 10, 1948 [1]

"*Article II.* The ships to which the present Convention applies are ships registered in countries the Governments of which are Contracting Governments, and ships registered in territories to which the present Convention is extended under Article XIII."

20. *Convention (No. 91) concerning Vacation Holidays with Pay for Seafarers (revised 1949),* June 18, 1949 [2]

"*Article 13.* 2. It shall come into force six months after the date on which there have been registered ratifications by nine of the following countries..., including at least five countries each of which has at least one million (1,000,000) gross registered tons of Shipping."

21. *Convention (No. 93) concerning Wages, Hours of Work on Board Ship and Manning (revised 1949),* June 18, 1949 [3]

"*Article 2.* 1. This Convention applies to every vessel whether publicly or privately owned, which is—

(a) registered in a territory for which the Convention is in force."

"*Article 26.* 2. It shall first come into force six months after the date at which the following conditions have been fulfilled:

(a) The ratifications of nine of the following Members have been registered...

(b) At least five of the Members whose ratifications have been registered have at the date of registration each not less than one million (1,000,000) gross registered tons of Shipping."

22. *International Convention for the Unification of certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation,* May 10, 1952 [4]

"*Article 1.* In the event of a collision or any other incident of navigation concerning a sea-going ship and involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, criminal or disciplinary proceedings may be instituted only before the judicial or administrative authorities of the State of which the ship was flying the flag at the time of the collision or other incident of navigation."

"*Article 2.* In the case provided for in the preceding Article, no arrest or detention of the vessel shall be ordered, even as a measure

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[1] United Kingdom *Treaty Series,* No. 1 (1953), Cmd. 8720.
[2] I.L.O. Conventions and Recommendations, 1919-1949, p. 801.
[3] I.L.O. Conventions and Recommendations, 1919-1949, p. 823.
[4] United Kingdom Miscellaneous No. 13 (1953), Cmd. 8954.

of investigation, by any authorities other than those whose flag the ship was flying."

23. *International Convention for the Prevention of Pollution of the Sea by Oil*, May 12, 1954 [1]

"*Article XV.* (1) The present Convention shall come into force twelve months after the date on which not less than ten Governments have become parties to the Convention, including five Governments of countries each with not less than 500,000 gross tons of tanker tonnage."

24. *International Convention relating to Stowaways*, 1957 [2]

"*Article 2.* (1) If on any voyage of a ship registered in or bearing the flag of a Contracting State a stowaway is found in a port or at sea, the master of the ship may..."

"*Article 3.* (4) Finally, when the stowaway cannot be returned as provided under paragraph (1), (2) or (3) of this Article, the appropriate authority may return him to the Contracting State whose flag was flown by the ship in which he was found."

25. *International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships*, October 10, 1957 [3]

"*Article 11.* (1) This Convention shall come into force six months after the date of deposit of at least ten instruments of ratification, of which at least five by States that have each a tonnage equal or superior to one million gross tons of tonnage."

26. *Argentine Republic—Brazil. Treaty of Commerce and Navigation*, January 23, 1940 [4]

"*Article 16.* (1) For the purpose of this article vessels of either nation shall be considered to be those registered and manned in, and which operate according to the laws, of the respective countries."

27. *Belgium—United States. Treaty of Commerce and Navigation*, November 10, 1845 [5]

"*Article XII. Vessels provided with passport.* The High Contracting Parties agree to consider and to treat as Belgian vessels, and as vessels of the United States, all those which, being provided by the competent authority with a passport, sea letter, or any other sufficient document, shall be recognized conformably with existing laws as national vessels in the country to which they respectively belong."

28. *Belgium—United States. Treaty of Commerce and Navigation*, March 8, 1875 [6]

"*Article IX.* The High Contracting Parties agree to consider and to treat as Belgian vessels, and as vessels of the United States, all

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[1] United Kingdom *Treaty Series* No. 56 (1958), Cmnd. 595.

[2] *Report of The British Maritime Law Association on The Diplomatic Conference held in Brussels from September 30th to October 10th 1957*, pp. 84 and 86.

[3] *Ibid.*, p. 47.

[4] *Diario Official*, December 19, 1941; British & Foreign State Papers, Vol. 144, p. 209.

[5] U.S. Stat. at Large, Vol. 8, 1789-1845, p. 606.

[6] *U.S.T.S.* No. 28.

those which being provided by the competent authority with a passport, sea letter, or any other sufficient document, shall be recognized, conformably with existing laws, as national vessels in the country to which they respectively belong."

29. *China—United States. Treaty of Friendship, Commerce and Navigation*, November 4, 1946 [1]

"*Article XXI.* 2. Vessels under the flag of either High Contracting Party, and carrying the papers required by its national law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both within the ports, places and waters of the other High Contracting Party and on the high seas."

30. *Poland—Czechoslovakia. Communications Agreement*, July 4, 1947 [2]
This provides in Article 32, that the nationality of a vessel is to be determined "in accordance with the laws of the State to which the vessel belongs."

31. *Estonia—United States. Treaty of Friendship, Commerce and Consular Rights*, December 23, 1925 [3]

"*Article X.* Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

32. *Finland—United States. Treaty of Friendship, Commerce and Consular Rights*, February 13, 1934 [4]

"*Article XV. Proof of Nationality.* For the purposes of this treaty merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties and carrying the papers required by its national laws in proof of nationality shall be deemed to be the vessels of the Party whose flag is flown both within the territorial waters of the other High Contracting Party and on the high seas."

33. *Finland—United States. Double Taxation Convention*, March 3, 1952 [5]
"*Article V. Shipping Profits.* (1) Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation in the other contracting State. [6]"

34. *France—United States. Shipping and Aviation Taxation*, July 25, 1939 [7]

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[1] *U.N.T.S.*, 25, p. 69; *U.S.T.I.A.S.* No. 1871.
[2] *U.N.T.S.*, 85, p. 262.
[3] *L.N.T.S.*, 50, p. 13; *U.S.T.S.* No. 736.
[4] *L.N.T.S.*, 15, p. 45; *U.S.T.S.* No. 868.
[5] *U.N.T.S.*, 177, p. 163; *U.S.T.I.A.S.* No. 2596.
[6] See also: *(a)* Canada-United States
Double Taxation on Income, May 4, 1942, *U.S.T.S.* No. 983: Art. V.
(b) Belgium-United States
Double Taxation on Income, *U.S.T.I.A.S.* No. 2833; Art. VII (1).
[7] *U.S.T.S.* No. 988.

"*Article 6.* Income derived by navigation enterprises of one of the contracting States from the operation of ships documented under the laws of that State shall continue to benefit in the other State by the reciprocal tax exemptions accorded by the exchange of notes of June 11 and July 8, 1927, between the United States of America and France."

35. *Germany—Italy, Treaty of Friendship, Commerce and Navigation,* 1959

"*Article 24.* Vessels under the flag of one Contracting State which carry with them the documents prescribed under its municipal law as proper evidence of nationality shall be considered vessels of that Contracting State."

36. *Germany—United States. Treaty of Friendship, Commerce and Consular Rights,* December 8, 1923 [1]

"*Article X.* Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

37. *Germany (Federal Republic of)—United States. Treaty of Friendship, Commerce and Navigation,* October 29, 1954 [2]

"*Article XIX.* 1. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party.

2. The term 'Vessels', as used in the present Treaty, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not include vessels of war."

38. *Greece—Iran. Convention of Establishment, Commerce and Navigation,* January 9, 1931 [3]

"*Article 16.* Les navires marchands grecs ... seront traités en Perse, et les navires marchands persans ... en Grèce, de la même façon que les navires marchands nationaux, et en aucun cas plus défavorablement que les navires marchands d'un autre pays quelconque."

39. *Greece—Italy. Treaty of Friendship, Commerce and Navigation,* November 5, 1948 [4]

"*Article 26.* La nationalité des navires sera constatée d'après les lois de l'État auquel le navire en question appartient, au moyen des titres et patentes se trouvant à bord, délivrés par les autorités compétentes."

40. *Greece—Lebanon. Treaty regarding Consular Representation, Navigation,* etc., October 6, 1948 [5]

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[1] *L.N.T.S.*, 52, p. 133; *U.S.T.S.* No. 725.
[2] *U.S.T.I.A.S.* 3593.
[3] British & Foreign State Papers, 1949—III, Vol. 155, p. 613.
[4] British & Foreign State Papers, 1948—III, Vol. 152, p. 423.
[5] *U.N.T.S.*, 87, p. 351; British & Foreign State Papers, 1948—III, Vol. 152, p. 441.

"*Article 11.* La nationalité des navires de chacune des Hautes Parties contractantes, déterminée selon les lois et règlements qui y sont en vigueur, sera reconnue par l'autre Partie pour l'application des dispositions du présent Traité."

41. *Greece—United States, Treaty of Friendship, Commerce and Navigation*, August 3, 1951 [1]

"*Article XXI.* 2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other party."

"*Article XXIV.* 8. The term 'vessels' as used in the present Treaty, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraph 2 of Article XXI and paragraph 1 of Article XXII [the latter paragraph relates to vessels in distress], include fishing vessels or vessels of war."

42. *Greece—United States. Double Taxation on Income*, February 20, 1950 [2]

"*Article V.* (1) Income which an enterprise of one of the Contracting States derives from the operation of ships or aircraft registered or documented in that State shall be exempt from tax by the other Contracting State. Income derived by such an enterprise from the operation of ships or aircraft not so registered or documented shall be subject to the provisions of Article III."

43. *Honduras—United States. Treaty of Friendship, Commerce and Consular Rights*, December 7, 1927 [3]

Article X. The same wording as No. 31 above.

44. *Iran—United States. Treaty of Amity, Economic Relations and Consular Rights*, August 15, 1955 [4]

Article X, paragraphs 2 and 6. The same wording as No. 41 above.

45. *Ireland—United States. Treaty of Friendship, Commerce and Navigation*, January 21, 1950 [5]

Article XVIII, paragraph 2. The same wording as No. 41 above.

46. *Italy—Lebanon. Treaty of Friendship, Commerce and Navigation*, February 15, 1949 [6]

"*Article 26.* La nationalité des navires sera constatée selon les lois de la Partie à laquelle appartient le navire, au moyen des titres et patentes se trouvant à bord, délivrés par les autorités compétentes."

"*Article 27.* Le traitement des navires nationaux ne s'étend pas:

a) à l'application de lois spéciales pour la marine marchande nationale, en ce qui concerne les encouragements soit à l'industrie des constructions navales soit à la navigation au moyen des primes ou d'autres facilités spéciales;

b) au cabotage, qui est réservé aux navires nationaux."

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[1] *U.S.T.I.A.S.* 3057.
[2] *U.N.T.S.*, 196, p. 269; *U.S.T.I.A.S.* 2902.
[3] *L.N.T.S.*, 87, p. 421; *U.S.T.S.* No. 764.
[4] *U.S.T.I.A.S.* 3853.
[5] *U.S.T.I.A.S.* 2155.
[6] British & Foreign State Papers, 1949—III, Vol. *155*, p. *725*.

47. *Italy—United States. Treaty of Friendship, Commerce and Navigation,* February 2, 1948 [1]

"*Article XIX.* 2. Vessels under the flag of either High Contracting Party, and carrying the papers required by its national law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both within the ports, places and waters of the other High Contracting Party and on the High Seas. As used in the Treaty, 'vessels' shall be construed to include all vessels of either High Contracting Party whether privately owned or operated, or publicly owned or operated."

48. *Japan—United States. Treaty of Commerce and Navigation,* February 21, 1911 [2]

"*Article X.* Nationality of Vessels. Merchant vessels navigating under the flag of the United States or that of Japan and carrying the papers required by their national laws to prove their nationality shall in Japan and in the United States be deemed to be vessels of the United States or of Japan respectively."

49. *Japan—United States. Treaty of Commerce and Navigation,* August 29, 1953 [3]

"*Article XIX.* 2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party."

7. The term 'vessels', as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated;"

50. *Korea—United States. Treaty of Friendship, Commerce and Navigation,* November 28, 1956 [4]

Article XIX, paragraphs 2 and 6. The same wording as No. 41 above.

51. *Liberia—United States. Treaty of Friendship, Commerce and Navigation,* August 8, 1938 [5]

"*Article XV.* Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

52. *Liberia—Germany. Treaty of Amity and Commerce,* 6 January, 1931

"*Article X.* Liberian vessels and their cargoes in Germany and German vessels and their cargoes in Liberia shall be treated in the same way as native vessels and their cargoes."

"*Article XI.* ... In like manner, the protection of the Government of Germany shall be granted to all Liberian ships, their officers and crews."

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[1] *U.N.T.S.,* 79, p. 171; *U.S.T.I.A.S.* 1965.
[2] *U.S.T.S.* No. 558.
[3] *U.S.T.I.A.S.* 2863.
[4] *U.S.T.I.A.S.* 3947.
[5] *L.N.T.S.,* 201, p. 163; *U.S.T.S.* No. 956.

53. *Netherlands—United States. Treaty of Friendship, Commerce and Navigation*, March 27, 1956 [1]

"*Article XXI.* 2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party."

"*Article XIX.* 6. The term 'vessels', as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated, except vessels of war. This term does not, except with reference to paragraphs 1 and 5 [paragraph 5 relates to vessels in distress] of the present Article and Article XX [relating to reconstituting crews], include fishing vessels."

54. *Netherlands—United States. Double Taxation on Income*, April 29, 1948 [2]

"*Article VI.* (1) Income which an enterprise of one of contracting States derives from the operation of ships or aircraft registered in that State shall be taxable only in the State in which such ships or aircraft are registered."

55. *Nicaragua—United States. Treaty of Commerce and Navigation*, January 21, 1956 [3]

Article XIX, paragraphs 2 and 6. The same wording as No. 41 above.

56. *Norway—United States. Treaty of Friendship, Commerce and Consular Rights*, June 5, 1928 [4]

Article X. The same wording as No. 31 above.

57. *Paraguay—United States. Treaty of Friendship, Commerce and Navigation*, February 4, 1859 [5]

"*Article VII.* All vessels which, according to the laws of the United States of America, are to be deemed vessels of the United States of America, and all vessels which, according to the laws of Paraguay, are to be deemed Paraguayan vessels, shall for the purposes of this treaty, be deemed vessels of the United States of America and Paraguayan vessels, respectively."

58. *Spain—United States. Treaty of Commerce and Navigation*, July 3, 1902 [6]

"*Article XI.* All vessels sailing under the flag of the United States, and furnished with such papers as their laws require, shall be regarded in Spain as United States vessels and reciprocally, all vessels sailing under the flag of Spain and furnished with the papers which the laws of Spain require, shall be regarded in the United States as Spanish vessels."

59. *Sweden—United States. Shipping and Aviation Income*, March 23, 1939 [7]

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[1] *U.S.T.I.A.S.*, 3942.
[2] *U.N.T.S.*, 132, p. 167.
[3] *U.S.T.I.A.S.* 4024.
[4] *U.S.T.S.* No. 852.
[5] *U.S.T.S.* No. 272.
[6] *U.S.T.S.* No. 422.
[7] *U.S.T.S.* No. 958.

"*Article IV*. Income which an enterprise of one of the Contracting States derives from the operation of ships or aircraft registered in that State is taxable only in the State in which registered. Income derived by such an enterprise from the operation of ships or aircraft not so registered shall be subject to the provisions of Article 2."

60. *United Kingdom—Denmark. Convention regulating the Fisheries outside Territorial Waters in the Ocean surrounding the Faröe Islands and Iceland*, June 24, 1901 [1]

"*Article 5*. The fishing boats of the High Contracting Parties shall be registered in accordance with the administrative regulations in force in their respective countries."

61. *United Kingdom—Iran. Treaty of Commerce, Establishment and Navigation*, March 11, 1959 [2]

"*Article 2*, paragraph 3. The term 'vessel' means, in relation to a High Contracting Party, all ships registered at a port in any territory of that High Contracting Party to which the present treaty applies."

62. *United Kingdom—United States. Double Taxation on Income*, April 16, 1945, and June 6, 1946 [3]

"*Article V*. (1) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual (other than a citizen of the United States) resident in the United Kingdom or a United Kingdom corporation derives from operating ships documented or aircraft registered under the laws of the United Kingdom, shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in the United Kingdom or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States shall be exempt from United Kingdom tax."

63. *U.S.S.R.—Iran. Treaty of Commerce and Navigation*, March 25, 1940 [4]

"*Article 12*. (1) The vessels plying in the Caspian under the flag of either of the High Contracting Parties shall be treated in all ways in the same manner as the national vessels when in the ports of the other High Contracting Party."

64. *U.S.S.R.—Yugoslavia. Treaty of Commerce and Navigation*, May 11, 1940 [5]

"*Article 5. (b)* The nationality of vessels shall be mutually recognized in accordance with the laws and regulations of each of the contracting parties supported by documents and certificates (Licenses) carried by the vessel and issued by the competent authorities of the respective country."

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[1] British & Foreign State Papers, Vol. 94, p. 29.
[2] United Kingdom, Iran No. 1 (1959), Cmnd. 698.
[3] *U.N.T.S.*, 6, p. 189.
[4] British & Foreign State Papers, 1940—II, Vol. 144, p. 419.
[5] British & Foreign State Papers, 1940—II, Vol. 144, p. 531.

Appendix II

THE PREPARATORY WORK FOR THE I.M.C.O. CONVENTION

The *travaux préparatoires* for the I.M.C.O. Convention are to be found in the documentation of two conferences: the second session of the United Maritime Consultative Council (hereinafter called "the U.M.C.C.") held in Washington, October 24-30, 1946, and the United Nations Maritime Conference of 1948.

1. *The United Maritime Consultative Council*

The first draft of the Convention was prepared by a Committee which met in London in July, 1946. This draft appears as document UMCC. 2/2 in the records of the 1946 Session of the U.M.C.C. The provision which subsequently became Article 28 *(a)* of the Convention was Section 2 of Article VII. The terms of this section were as follows:

> "*Section 2.* The Maritime Safety Committee shall consist of 12 Member Governments selected by the Assembly from the Governments of those nations having an important interest in maritime safety and owning substantial amounts of merchant shipping, of which *no less than nine shall be the largest ship-owning nations* and the remainder shall be selected so as to ensure representation for the major geographical areas. The Maritime Safety Committee shall have power to adjust the number of its members with the approval of the Council. No Government shall have more than one vote on the Committee but delegations may include or be accompanied by advisors. Membership of the Committee shall be for a period of 4 years. Governments shall be eligible for re-election. [1]"

This draft was accompanied by a Report by the Committee which had been responsible for its preparation. The only comment on Article VII (2) of the draft was contained in paragraph 12 of the Report:

> "12. The Maritime Safety Committee, as proposed, will include the largest shipowning nations. This is of great importance to its successful operation. Provision is also made for representation of other shipowning nations from all parts of the world thus giving recognition to the world-wide interest in the problems involved. In this respect some of the members of the Committee felt that representation on the Maritime Safety Committee should be provided for nations with special interests in the manning of ships. The Committee decided not to make any specific provision of this kind, but it has been considered appropriate to leave the Maritime Safety Committee with power to adjust the number of its members with the approval of the Council. [2]"

It may, however, be pertinent to refer to the terms in which the Committee commented on the proposal, in Article VI, Section 1, of the draft, that the Council of the Organization should comprise eight nations with

[1] UMCC 2/2, p. 6. Italics supplied.
[2] UMCC 2/2, pp. 11-12.

the largest interest in the provision of international shipping services and four maritime nations with the largest interest in international trade. The Committee said, in paragraph 7 of its Report:

> "7. In recommending that twelve of the members of the Council should comprise eight nations with the largest interest in the provision of international shipping services and four maritime nations with the largest interest in international trade, *we have not intended that the selection should be made on a rigid, statistical basis*, which in any case would be difficult to determine. We have, however, recognized that the nations with the largest interests in shipping and international trade must of necessity play a leading part in the work of the Organization, while at the same time provision is made for the four remaining members of the Council to be chosen at the discretion of the Assembly, having regard to the desirability of adequate geographical representation, thus reflecting in the Council the representative and world-wide character of the Organization. [1]"

No such comment was made with respect to Article VII (which subsequently became the present Article 28*(a)*.) There is, therefore, certainly room for the view, in contrasting the terms of the comments upon Article VI (1) and Article VII (2), that although the draftsmen considered the determination of size needed for the former article should not be made on "a rigid, statistical basis", the calculation of size in connection with Article VII (2) was a simple matter of reference to statistical tables. If this interpretation of what may have been in the minds of the draftsmen is correct, there can be no doubt that registration was intended to be the criterion of size, for there is no other criterion in respect of which the necessary statistical information can readily be ascertained.

The second draft of the I.M.C.O. Convention was submitted by the United States for consideration at an early stage of the 1946 Conference [2].

Article VII of this draft, entitled "Maritime Safety Committee", provided in Section 1, as follows:

> "*Section 1.* The Maritime Safety Committee shall consist of 12 Member Governments selected by the Assembly from the governments of those nations having an important interest in maritime safety and having substantial amounts of merchant shipping, of which not less than nine shall be the largest shipowning nations, and the remainder shall be selected so as to ensure representation for the major geographic areas. The Committee shall meet at least once a year. Membership of the Committee shall be for a period of years. [3]"

The third draft of the Convention was prepared by a Drafting Committee appointed on October 26, 1946 [4]. It was based on the United States draft mentioned above.

Two versions of Article VII, Section 1, were put forward: they provided as follows:

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[1] UMCC 2/2, p. 10. Italics supplied.
[2] See UMCC 2/21.
[3] *Ibid.*, p. 11.
[4] See UMCC 2/29.

(i) "*Section 1*. The Maritime Safety Committee shall consist of 12 Member Governments selected by the Assembly from the governments of those nations having an important interest in maritime safety and having substantial amounts of merchant shipping, of which not less than nine shall be the largest shipowning nations and the remainder shall be selected so as to ensure representation for the major geographic areas. The Committee shall meet at least once a year. Membership of the Committee shall be for a period of years."

(ii) "Alternative draft of Article VII, Section 1 (submitted by Drafting Committee after discussion of amendment proposed by Indian member):

The Maritime Safety Committee shall consist of 12 Member Governments selected by the Assembly from the governments of those nations having an important interest in maritime safety, of which not less than seven shall be the largest shipowning nations, and the remainder shall be selected so as to ensure adequate representation of other nations with important interests in maritime safety and of major geographical areas. Membership of the Committee shall be for a period of years [1]".

The final draft agreed by the Second Session of the U.M.C.C. for recommendation to the Member Governments and through them to the Economic and Social Council of the United Nations was dated October 30, 1946 [2].

Article VII, Section 1, provided as follows:

"*Section 1*. The Maritime Safety Committee shall consist of fourteen Member Governments selected by the Assembly from the governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest shipowning nations, and the remainder shall be selected so as to ensure adequate representation of other nations with important interests in maritime safety and of major geographical areas. Membership of the Committee shall be for a period of years. Governments shall be eligible for re-election. [3]"

The discussion of the drafts was commenced at the second meeting of the Washington Conference [4]; and continued at the third [5], fourth [6], fifth [7], sixth [8], eighth [9] and ninth [10] meetings.

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[1] UMCC 2/29, p. 5. October 27, 1946.

[2] UMCC 2/29 (Final document), October 30, 1946. This, it appears, was a version collated by the Secretariat from UMCC 2/21, UMCC 2/29 and UMCC 2/29 (First Revision). See Minutes of Ninth Meeting of U.M.C.C., paragraph 2, UMCC 2/46, p. 4.

[3] *Ibid.*, pp. 5-6.

[4] October 24, 1946. See UMCC 2/20, pp. 5 *et seq.*

[5] October 25, 1946. See UMCC 2/24, pp. 4 *et seq.*

[6] October 25, 1946. See UMCC 2/28, pp. 4 *et seq.*

[7] October 26, 1946. See UMCC 2/30, p. 4.

[8] October 28, 1946. See UMCC 2/41, p. 4.

[9] October 29, 1946. See UMCC 2/43, pp. 9 *et seq.*

[10] October 30, 1946. See UMCC 2/46, p. 4.

Specific reference was made to Article VII at the fifth [1], sixth [2] and eighth meetings [3] only. No reference was made to the meaning of the expression "largest ship-owning nations" and the discussion was almost exclusively devoted to a consideration of the size of the Committee and of the distribution of its membership as between ship-owning and other nations.

II. *The United Nations Maritime Conference*

This Conference met at Geneva from February 19 to March 6, 1948. The draft before it was the one prepared by the United Maritime Consultative Council in 1946 [4] as described above, and as commented upon by Governments [5]. No comment was made by any Government upon the expression "the largest ship-owning nations" or, indeed, upon any other matter which is relevant in the present connection. Nor do the Summary Records [6] of the Conference reveal any consideration whatsoever of the expression "the eight largest ship-owning nations".

A Special Working Party on the Maritime Safety Committee was set up on February 27, 1948 [7]. No record of the deliberations of the Working Party appears to be available. The present form of Article 28 (1) is approximately achieved in a Proposed Text of Article VII of the Draft Convention submitted by the Maritime Safety Working Party [8]. The Rapporteur of the Working Party made no relevant comment when he referred to the draft and discussions of the Working Party [9]. The section was adopted on March 1, 1948, "subject to drafting changes [10]".

It was at some stage after this and prior to March 5, 1948, that the word "selected" in the original draft was replaced by the word "elected".

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[1] UMCC 2/30, p. 13.
[2] UMCC 2/41, pp. 17-21.
[3] UMCC 2/43, p. 11.
[4] E/CONF. 4/1.
[5] E/CONF. 4/2.
[6] E/CONF. 4/SR. Revised.
[7] *Ibid.*, p. 69.
[8] E/CONF. 4/33.
[9] E/CONF. 4/SR. Revised, p. 76.
[10] *Ibid.*, p. 78.

Appendix III

THE LIBERIAN MARITIME PROGRAMME

The Maritime Programme, as established by the Liberian Maritime Laws and Regulations and as further implemented by the administrative policies of the offices of the Commissioner and Deputy Commissioners of Maritime Affairs, provides for a system whereby Liberian Flag vessels must meet and constantly maintain the highest standards possible. These standards, prescribed by the Liberian Maritime Laws and Regulations and the International Conventions ratified by Liberia, must not only be met for purposes of registration but also for the continuing maintenance of registration of vessels under the Liberian Flag.

(A) *Liberian Registration Requirements*

Registration requirements are set forth in Sections 56 and 66 of the Liberian Maritime Law, as amended (formerly the Liberian Maritime Code), hereinafter referred to as "the Maritime Law". In essence, these Sections require the submission to the Commissioner or a Deputy Commissioner, by the applicant for registration, of satisfactory proof as to (1) ownership of the vessel; (2) proof of seaworthiness; (3) in the case of transfer from a foreign flag, consent of the government concerned and cancellation from the foreign registry; (4) payment of proper fees and taxes.

(1) *Ownership*

Every effort is made to encourage the ownership of vessels by Liberian citizens (corporations, partnerships or in individuals). Official policy is to require Liberian ownership of vessels under 1600 net tons. As at October 31, 1959, out of a total of 360 vessels of 4,517,871 gross tons registered since 1957, 186 vessels of 2,507,447 gross tons were owned by Liberian nationals.

(2) *Proof of Seaworthiness*

Recognizing that classification with a reputable Classification Society has long been accepted as the most satisfactory proof of seaworthiness by maritime nations, insurance companies and underwriters, shipowners, purchasers and sellers of vessels and others directly interested in maritime matters, the Republic of Liberia in Regulations 2.2 and 2.7 of the Maritime Law accepts classification as evidence that a vessel is in seaworthy condition. Five of the leading Classification Societies have been designated as the only Societies with whom classification will be accepted. These Classification Societies are:

American Bureau of Shipping
Bureau Veritas
Det Norske Veritas
Germanischer Lloyd
Lloyd's Register of Shipping.

Classification is not only a prerequisite for registration, but failure to maintain class, once registered, makes the vessel liable to loss of

registration. This statutory requirement of seaworthiness goes beyond the requirements of many other maritime nations.

(3) *Transfer from foreign flag*

Where a vessel is being transferred from a foreign registry, the required proof of permission and cancellation that is submitted must expressly affirm that the vessel is to be registered under Liberian Flag in the name of the applicant. This is, of course, consistent with accepted international principles that a vessel may not have at any time more than one registry. It is also acknowledgement by the government of the former registry of the effective transfer of the registry.

(4) *Other factors affecting registration*

Mere compliance with the basic requirements of the above Sections of the Maritime Law and Regulations does not mean automatic acceptance for registration. Factors such as ownership, age, type or size of the vessel, or proposed trade may operate to make the vessel undesirable and, as a result, the application will be refused. Liberia has one of the most modern fleets with respect to age, size and type of vessel, and every effort is made to see that this is continued. Applications involving older vessels are usually refused. Thus, of the 4,517,871 gross tons registered under Liberian Flag *from July 1, 1957, to October 31, 1959, only* 4% (approximately) were built prior to 1942. Moreover, approximately 74.8% of this total registration, or 3,380,675 gross tons, are less than three years of age.

(B) *Compliance with International Conventions*

In addition to the prerequisite of classification denoting seaworthiness, all Liberian vessels are required to comply fully with all the applicable requirements of the International Conventions to which the Republic of Liberia is or may become a signatory. Among the International Conventions which Liberia has ratified and incorporated into its laws, are the following:

International Convention for the Safety of Life at Sea, 1948
International Load Line Convention, 1930
International Telecommunication Convention, 1947.

Regulation 2.8 provides that, if a vessel fails to comply with the applicable requirements of these International Conventions, the Commissioner or a Deputy Commissioner of Maritime Affairs may cancel the vessel's Certificate of Registry or impose such other conditions as may be required.

The Republic of Liberia issues a number of Certificates required by the above-mentioned International Conventions. These documents include:

(1) *Liberian International Load Line Certificate.* This Certificate is issued in the form and manner prescribed by the International Load Line Convention, 1930. The Classification Societies, mentioned previously, acting on behalf of the Republic of Liberia, assign load line and freeboards in accordance with the Rules established in the Convention. Inasmuch as the Convention makes the assignment of load line conditional upon the ship being structurally efficient and effective protection being provided for ship and crew, such assignment is made only after

extensive surveys. The Load Line Certificate is valid for a term not exceeding five years. Renewal of a Liberian Load Line Certificate by the issuance of a new Certificate may be effected only after a survey no less complete than the initial survey.

Inasmuch as full responsibility for Certificates issued under the Convention rests with the Government on whose behalf such Certificates are issued, the Republic of Liberia also requires annual load line inspections to ensure that the hull and superstructures have not been altered and that the fittings and appliances specified in the Convention are maintained as required throughout the term of the Load Line Certificate. Copies of Liberian Load Line Certificates and Annual Load Line Inspection Reports are filed with the offices of the Commissioner and the Deputy Commissioners. The Deputy Commissioner's office reviews such Certificates and Reports and keeps a record of the dates of expiration of the Load Line Certificates in order to keep control over the owners' compliance with the requirements concerning surveys to be carried out and Certificates to be issued or renewed.

(2) *Liberian Safety Equipment Certificate.* This Certificate is required by the International Convention for the Safety of Life at Sea, 1948. The Certificate is issued by the proper Classification Society when the necessary surveys set forth in the Convention, with respect to structural efficiency, life-saving equipment and other matters, have been completed. The Certificate is issued in the form and manner prescribed by the Convention and is valid for a term not exceeding two years. Renewal of a Liberian Safety Equipment Certificate may be effected only after a survey no less complete than the initial survey. Where the Convention requires types of approved equipment, generally accepted international standards must be satisfied. Exemptions from any requirements of the Convention with respect to this particular Certificate or any other Certificates mentioned herein may not be granted by the Societies unless specifically approved by the Commissioner or a Deputy Commissioner. Any such exemptions are kept at a minimum and are granted only where warranted within the scope and intent of the Convention. Copies of the Liberian Safety Equipment Certificates are filed with the office of the Commissioner and the Deputy Commissioners, which reviews such Certificates and keeps a record of the dates of expiration to see all requirements are constantly met. This Certificate is also checked against the other registration documents to see that there is no variation between them. For example, if the Certificate shows life-saving equipment for a lesser number of personnel than indicated in the application for registration, immediate steps are taken to ascertain the correct facts.

(3) *Liberian Safety Radiotelegraphy or -telephony Certificate.* This Certificate is also issued by the proper Classification Society in accordance with the rules established by the International Convention for the Safety of Life at Sea, 1948. It is issued in the form and manner prescribed by the Convention and valid for a term not exceeding one year. It is issued only after an extensive survey of the radio, telegraphy and/or telephony equipment on board the vessel. Renewal of the Liberian Safety Radiotelegraphy or -telephony Certificates may be effected only after a survey no less complete than the initial survey. This Certificate, and all the other Certificates referred to herein, are reviewed by the

Deputy Commissioner's office, and schedules of the dates of expiration are kept in order to keep control over the requirements and to see that the necessary surveys are carried out and the Certificates issued or renewed.

(4) *Liberian Safety Certificate.* This Certificate is also issued pursuant to the rules and requirements set forth in the International Convention for the Safety of Life at Sea, 1948. This Certificate is issued only with respect to passenger ships, and is issued in lieu of the Safety Equipment and Safety Radiotelegraphy Certificates. The same review and schedules are kept in connection with this Certificate as mentioned above in connection with other Certificates.

(5) *Liberian Certificate of Measurement.* All Liberian Flag vessels are required to have a Liberian Certificate of Measurement. Regulation 2.3 adopts, as a standard of measurement for vessels under Liberian Flag, Title 19, Part 2, of the Code of Federal Regulations of the United States of America. In this connection, all Classification Societies acting for and on behalf of the Republic of Liberia have been instructed with respect to this requirement. Any time a change is made with respect to the vessel affecting its measurement, such change must be communicated immediately both to the Classification Society and to the Office of the Deputy Commissioner of Maritime Affairs in New York.

The vessel's structure and equipment thus must meet the requirements set forth in the above-mentioned International Conventions. Newbuildings to be registered under Liberian Flag are in accordance with the International Conventions surveyed during construction by Classification Societies acting on behalf of the Republic of Liberia, and the required Classification Certificates are issued upon completion of construction of the vessels. Vessels being transferred from the registry of a nation that is a signatory to both the International Load Line Convention and the Convention for the Safety of Life at Sea, 1948, have already met all the applicable requirements of the Conventions and are therefore in possession of all the required Certificates issued pursuant to those Conventions. Although these vessels are eligible at the time of registration for the corresponding Liberian Certificates, because of the nature of the shipping industry it is not always physically possible to have the then current Certificates available to the Commissioner or Deputy Commissioner; accordingly, subject to compliance with other requirements, the vessels are issued Provisional Certificates of Registry. The Permanent Certificate of Registry is issued after the necessary Liberian Certificates have been prepared and issued. However, the issuance of a Provisional Certificate of Registry does not mean that a vessel is being registered conditionally or provisionally, with any requirements either waived or disregarded. If, however, the vessel is being transferred from a nation that is not a signatory to these Conventions, the vessel will not be registered until it has first been surveyed by the proper Classification Society and all Liberian Certificates issued in accordance with the International Conventions.

In the issuance of the various Certificates required by the International Conventions mentioned above, the Republic of Liberia has appointed and authorized the five Classification Societies mentioned above to conduct, on its behalf, all the necessary surveys enumerated by the International Conventions and, if the vessels are found to comply fully

with the requirements set forth therein, to issue for and on behalf of the Republic of Liberia the necessary Liberian Certificates. The use of these Classification Societies has enabled the Republic of Liberia to have available for its immediate use worldwide organizations of technical experts whose knowledge, ability and integrity are beyond reproach. This is in clear contrast with the position in a number of the so-called traditional maritime nations, where the departments or branches of government concerned with such inspections and surveys are restricted to the territorial limits of that particular country or its possessions.

(C) *Additional Standards*

In many cases, Liberian Flag vessels are required to meet standards above and beyond those called for by these International Conventions. For example the International Load Line Convention provides for the issuance of a Load Line Certificate valid for five years and, further, calls for "periodic inspections". Although some signatories to the Convention have interpreted "periodic inspections" as referring to periods far in excess of one year, all Liberian Flag vessels must have such inspections conducted on an annual basis. Another example is Regulation 51 of the International Convention for the Safety of Life at Sea, 1948, which requires an alternate means of firefighting equipment for new vessels. Liberia makes this a requirement not only for new vessels, but also for existing vessels. With respect to radio, although the International Convention for the Safety of Life at Sea, 1948, permits any Authority, in respect of vessels over 1600 net tons but less than 5500 gross tons, to allow less than eight hours of listening time by operators, the Republic of Liberia always requires that all such vessels under its Flag must at all times provide at least eight hours of listening time by an operator.

(D) *Further Controls*

(1) *Ship Radio Station License.*

Another document to be submitted for registration is the Application for Ship Radio Station License. This license application is carefully scrutinized and the equipment and items appearing thereon are thoroughly checked against the list of modern and up-to-date equipment maintained on file in the Office of the Deputy Commissioner in New York. Where appropriate, the items on the application are also checked against the date as shown on the Liberian Safety Radiotelegraphy Certificate. The Ship Radio Station License is valid for three years and, upon expiration, a new license is issued only upon the submission of a new application. The purpose of requiring a new application is to provide a system whereby a check is maintained so as to see that the radio equipment is being maintained properly.

When the application for registration has been thoroughly checked and approved, the vessel is assigned an Official Number and Radio Call Letters. These Radio Call Letters are in the first instance allocated to the various countries by the International Telecommunication Union located in Geneva. Blocks of letters are assigned and reserved for the various countries. Originally, Liberia had been assigned the ELAA through ELZZ and 5LAA through 5LZZ blocks. Because of the large registration under Liberian Flag, these blocks have been almost ex-

hausted and, at the request of Liberia, the ITU has issued 5MAA through 5MZZ.

(2) *Licenses and Examinations.*

Liberia's comprehensive system of licensing deck, engineering and radio officers has been acclaimed throughout the shipping industry as one of the finest. Examinations may be taken at any one of the numerous examination centres conveniently located throughout the world. Also, Radar Observer Certificates are issued to qualified masters and deck officers holding Liberian Officers' Licenses of Competence upon successful completion of a comprehensive written examination. Examinations for the certification of efficient lifeboatmen have been provided. All form a part of Liberia's determined programme to enforce the highest standards of safety and competency aboard ships flying the Liberian Flag. In an article on September 28, 1958, the "New York Times", commenting on the Liberian licensing system, reported, "Independent operators and marine insurance underwriters agreed last week that the tests equal the toughest and best controlled examinations given by any of the traditional maritime nations".

(a) *Licenses of Competence:*

Section 290, Chapter 10, of the Liberian Maritime Law requires all officers on board Liberian Flag vessels to have Liberian Licenses of Competence to fill the respective positions in which they are serving. This is a requirement which must be met, and neither the Commissioner nor a Deputy Commissioner will issue any waiver in connection therewith. Firm control over the issuance of officers' licenses is established and maintained by permitting such licenses to be issued only by the Commissioner or a Deputy Commissioner.

Regulation 1.5 provides that a Liberian license may be issued either (1) on the basis of a license issued by another recognized maritime nation or (2) upon the successful completion of a comprehensive written examination.

(i) License without examination

When issued on the basis of a license of another recognized maritime nation, such nation itself must have required for the issuance of its own license the passing of a comprehensive written examination, coupled with substantial medical, physical, moral and practical sea experience requirements. The applicant for the Liberian license must file a comprehensive application on a required form together with a thorough medical report on the stationery of a recognized physician, two letters of recommendation, one from a company who had employed him in the past and one from a senior officer under whom he had served aboard the vessel, three photographs of himself, two photostats of his non-Liberian license and a nominal fee. The non-Liberian license must be still valid and outstanding and, in addition, the applicant must prove that he has been to sea in that capacity within the past five years. The application, together with the accompanying documents and papers, is carefully scrutinized and investigated and, if found to meet the necessary requirements, the proper Liberian License of Competence is issued. This license will be in the same grade only as the non-Liberian license submitted. If the non-Liberian license had noted on it any restrictions, such as limitations as to tonnage, horsepower or trading area, the same restrictions will be stated in the Liberian license.

(ii) License by examination

Where the applicant is seeking a Liberian license on the basis of the comprehensive Liberian written examination, he must first satisfy requirements with respect to experience, medical, physical and moral standards. The Liberian system of examinations was devised as the result of many meetings and discussions with a committee of shipowners, operators, officers and other parties experienced in maritime matters. These meetings were called by the Deputy Commissioner in New York expressly for this purpose, and the examinations which were finally set up are most comprehensive, covering every subject that the officer should and must know, be he serving in the deck, engine or radio department. With respect to deck officers, the subjects covered include:

Navigation
International Rules of the Road
Cargo Handling and Stowage
Instruments and Accessories
Seamanship
Chart Navigation
Sea Terms and Definitions
Ocean winds, weather & currents
Rules and Regulations
Firefighting
Lifesaving
Radar Navigation
Signalling
Star Identification
Aids to Navigation

In connection with engine officers, the subjects covered include:

Marine Boilers
Turbines
Electricity
Refrigeration
Diesel Engines
Engineering Mathematics
Rules and Regulations
Firefighting

With respect to radio operators, the subjects covered include:

International Regulations
Taxation of Telegrams
"Q" Code
Frequency Allocations
International Publications
Basic Operator Procedure
Radar
Basic Electricity
Radio Tubes
Transmitting and Receiving Telegraphy and Telephony
Radio direction finders
Practical Operation of equipment, including starting, stopping, tuning, transmission and receiving

(b) *Examination Procedure:*

The examination itself takes from three to five days, depending upon the applicant's ability. A set formula has been established in so far as the requirements of previous experience are concerned. Thus, in order to take the Master's examination, the applicant must be a holder of a first mate's license issued by Liberia or another recognized maritime nation and must while the holder of such license, have served either one year as a first mate or two years as a second mate.

In view of the short time spent in any port, especially in the case of tankers, it would be most difficult for some applicants to spend three to five days in port for examination purposes. For this reason, in addition to facilities for examination set up throughout the world, part of the examination (except in the case of Masters and Chief Engineers) can be taken on board a vessel.

The Republic of Liberia fully realizes the importance of proper controls and safeguards over the examination. To this end special procedures have been devised for examinations on board ship with instructions to Masters, under whose directions or in whose presence the examinations are conducted and who return affidavits as to freedom from assistance and time taken. Moreover, in such situations a second, shorter, but nevertheless comprehensive, examination must be taken at one of the designated port facilities.

Besides being available in Monrovia and New York, facilities for the deck and engineering examinations are provided by three of the Classification Societies who are acting as agents for the Republic of Liberia in connection with the issuance of the Liberian Certificates required by the International Conventions. These Classication Societies are:

American Bureau of Shipping
Bureau Veritas
Lloyd's Register of Shipping

The radio examination which, in every case, must be taken at a shore facility, is given at facilities provided by Société Anonyme Internationale de Télégraphie Sans Fil (S.A.I.T.) and its affiliates.

All the examinations are prepared in the office of the Deputy Commissioner of Maritime Affairs in New York and returned to this same office upon completion. When returned, they are turned over to a Board of Examiners for grading and recommendations. Acting upon these recommendations, the Deputy Commissioner then proceeds to issue the license, if warranted.

Because of the control exercised over the examination, the type of examination itself, the subject-matter covered, and the accompanying experience, medical, physical and moral requirements, shipowners, operators, insurance company adjustors, shipping men in general and officers have a high regard for the Liberian licenses.

(3) *Radar Observer Certificates.*

Radar Observer Certificates are issued only to qualified masters and deck officers holding Liberian Officers' Licenses of Competence. These Certificates are issued only upon the successful completion of comprehensive examinations which embrace basic radar theory, operation, use, interpretation and plotting.

(4) *Certification of Lifeboatmen.*

The Republic of Liberia requires that all passenger ships flying its Flag have the proper number of certified lifeboatmen in accordance with the International Convention for the Safety of Life at Sea, 1948. The seamen are examined both orally and by a written examination and also put through practical tests with respect to lowering, raising and manning lifeboats and with respect to lifesaving equipment. These lifeboatmen certificates may be issued only by the Commissioner or the Deputy Commissioner. When the examination is completed, the examiner submits his reports and recommendations to the Deputy Commissioner, who then takes appropriate action.

(5) *Casualty Reports.*

Regulation 1.8 provides that, in the event of any casualty on board a Liberian vessel involving loss of life or loss or damage to property, estimated to be in excess of $50,000, the Master shall promptly forward

a report thereon, signed by him, to the Commissioner of Maritime Affairs and to the Deputy Commissioner of Maritime Affairs at New York. Such report shall set forth the name and Official Number of the vessel, the type of the vessel, the name and address of the owner, the date and time of the casualty, the exact locality of the casualty, the nature of the casualty, and the circumstances under which it took place. If the casualty involves collision with another vessel, the name of such other vessel shall be provided. Where the casualty involves a loss of life, the names of all persons whose lives are lost shall be provided, and where damage to property is involved, the nature of the property damaged and the then estimate of the extent of the damage shall be supplied. This requirement goes beyond what is required by a number of other maritime nations.

(6) *Officer's Questionnaire.*

The Master of every vessel must complete a Questionnaire with respect to the officers serving on board the vessel, giving in detail the individual's name, the position held, the Liberian and non-Liberian license he has and also data with respect to the watches maintained. This report must be submitted on an annual basis.

(7) *Documents furnished Master.*

Upon registration of a vessel under Liberian Flag, the Master is handed a letter with enclosures. These enclosures include:

1. The Liberian Maritime Law (Form RLM-107)
2. Liberian Regulations (Form RLM-108)
3. Pamphlet entitled "Regulations for Preventing Collisions at Sea" (Form RLM-111)
4. Blank Reports of Maritime Casualty or Accident (Form RLM-109)
5. Notice to Navigators
6. Four copies of Oath of Master (Form RLM-113)
7. Officer's Questionnaire

(8) *Ships Files.*

Once registered, up-to-date files on every Liberian vessel are kept in the Office of the Commissioner in Monrovia and also in the Office of the Deputy Commissioner in New York. All documents, correspondence and Certificates relating to the particular vessel are kept in these individual ship files. In addition, current schedules are maintained as to all Certificates outstanding as to any particular vessel in order that the owner or agent of such vessel be informed sufficiently in advance with respect to the pending expiration of any Certificate and the need for renewing a Certificate. Any unreasonable delay in the carrying out of the surveys required for the renewal of the Certificates could result in the striking of the vessel from Liberian registry.

(E) *Participation in International Maritime Affairs*

Liberia has by no means neglected its responsibilities and duties in the community of nations. For example, in April 1958 Liberia joined the North Atlantic Ice Patrol and agreed to share the cost of operation and maintenance of this service, based on its percentage of the total tonnage navigating the waters concerned, in the same manner and on the same basis in which fourteen other countries belonging to the Patrol share

the expense. As a result, Liberia's assessment for the 1958 season was the second highest of all countries (a fraction less than the highest, the United Kingdom). The North Atlantic Ice Patrol was set up by leading maritime nations after the "Titanic" disaster to provide protection from the danger of icebergs to shipping on the North Atlantic route between Europe and the United States.

Liberian delegates have attended and actively participated in such international conferences as the Law of the Sea Conference held in Geneva in 1958, the Maritime Session of the Convention of the I.L.O. in 1958, and the Intergovernmental Maritime Consultative Organization's first meeting in London in January 1959.

Liberia was also invited to be a member of the Sub-Committee on Tonnage and Measurement of the I.M.C.O. Maritime Safety Committee. The Government of Liberia accepted this invitation, subject to reservation of its position in relation to the validity of the election to the Maritime Safety Committee held on January 15, 1959; and it has since actively participated in the work of the Sub-Committee. Liberia will be participating in the Safety of Life at Sea discussions scheduled for 1960 and in the Load Line discussions originally scheduled for the same time but now being deferred at the request of the United Kingdom Government.

Liberia is also a member of the United Nations and is an active participant in many branches of the United Nations and the technical organizations which are affiliated with the United Nations. In addition, Liberia has throughout the years concluded a number of treaties of friendship, commerce and navigation with other countries, including the United States, the United Kingdom, Spain, France, Belgium, West Germany and Ethiopia.

4. WRITTEN STATEMENT OF THE UNITED STATES OF AMERICA

Introduction

The Assembly of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as IMCO) in its Resolution A. 12 (I), dated January 19, 1959, has requested the International Court of Justice to give an advisory opinion on the following question of law:

> "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on 15 January, 1959, constituted in accordance with the Convention for the Establishment of the Organization?"

The IMCO Assembly has requested this advisory opinion as a consequence of differences of opinion which arose in the First Session of the IMCO Assembly as to the interpretation of Article 28 *(a)* of the IMCO Convention.

Article 28 in its entirety reads as follows:

> "*(a)* The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, government of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas.
>
> *(b)* Members shall be elected for a term of four years and shall be eligible for re-election."

Article 56 of the IMCO Convention provides that legal questions concerning the interpretation of the Convention which cannot be settled by the Assembly or in some other agreed-upon manner shall be referred to the International Court of Justice for an advisory opinion.

The Agreement between the United Nations and the Inter-Governmental Maritime Consultative Organization was approved by Resolution 204 (III) of the General Assembly of the United Nations on November 18, 1948, and by Resolution A. 7 (I) of the IMCO Assembly on January 13, 1959. Article XIX of this Agreement provides that this Agreement "shall come into force on its approval by the General Assembly of the United Nations and the Assembly of the Organization". Article IX of this Agreement authorizes the

IMCO Assembly to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities.

As of January 13, 1959, therefore, the IMCO Assembly was authorized, pursuant to Article 96 (2) of the Charter of the United Nations, to request the International Court of Justice for an advisory opinion on legal questions within the scope of the activities of the Inter-Governmental Maritime Consultative Organization.

As indicated in Section I of this statement, "Proceedings in First IMCO Assembly", certain delegations questioned whether it was "wise and justifiable" to refer this dispute to the International Court of Justice. (IMCO/A.I/SR. 9, pp. 6, 7, 8.) The United States, however, has consistently maintained that this is not only an appropriate procedure, but the most appropriate procedure, in view of the explicit terms of Article 56 of the IMCO Convention. The Court itself has observed that, as the principal judicial organ of the United Nations, the interpretation of a multilateral treaty is a "function which falls within the normal exercise of its judicial powers". *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, I.C.J. Reports 1947-1948, pp. 57, 61; *Competence of the General Assembly for the Admission of a State to the United Nations*, I.C.J. Reports 1950, pp. 4, 6. This also was the view of the Permanent Court of International Justice. *Designation of the Workers' Delegate for the Netherlands of the Third Session of the International Labour Conference*, P.C.I.J., Series B, No. 1; *Free City of Danzig and International Labour Organisation*, P.C.I.J., Series B, No. 18.

I. Proceedings in First IMCO Assembly

The election of the Maritime Safety Committee was the eleventh item of the agenda of the First Session of the IMCO Assembly. The Assembly proceeded to this election at its eighth meeting on January 15, 1959 (IMCO/A.I/SR. 8). The election was conducted on the basis of Resolution A. 9 (I) of the Assembly, proposed by the United Kingdom (IMCO/A.I/Working Paper 6), by which a separate vote was taken for each of the eight places on the Maritime Safety Committee for the "largest ship-owning nations", under subsection *(a)* of Article 28 of the IMCO Convention.

The United Kingdom draft resolution, which was subsequently adopted as Resolution A. 9 (I), provided that "the voting shall be in the order in which the nations appear on the Secretary-General's list" [IMCO/A.I/Working Paper 5, "Merchant fleets of IMCO Members according to the Lloyd Register of Shipping Statistical tables 1958"], and that "those eight nations which first receive a majority of votes in favour shall be declared elected". (IMCO/A.I/ Working Paper 6.)

The United Kingdom delegation directly challenged the qualifications of Liberia and Panama for the Maritime Safety Committee, stating that "neither from the point of view of interest in maritime safety nor from that of tonnage could Liberia or Panama be included amongst the eight maritime countries referred to in Article 28 *(a)* of the Convention". (IMCO/A.I/SR. 7, p. 3.)

The Liberian delegate maintained that under Article 28, "the Assembly had to elect the eight largest ship-owning nations", that "not to accept the list of those eight nations, which was drawn up in application of a valid criterion, and to refuse to elect the countries appearing in the list would constitute a breach of the Convention". (IMCO/A.I/SR. 7, p. 4.) The Liberian delegate further stated that he was prepared to submit this legal dispute to the International Court of Justice. The United States delegate stated the view of his Government that under Article 28 *(a)*, the eight IMCO Members with the largest gross registered tonnage should be elected to the Committee. Liberia and the United States had proposed amendments to the United Kingdom draft resolution, providing that "for the purpose of Article 28, the eight largest ship-owning nations shall be determined by reference to the figures for gross registered tonnage as they appear in the issue of Lloyd's Register of Shipping Statistical Tables [1] current on the date of the election", that "at the present time the eight largest ship-owning nations are the United States of America, the United Kingdom, Liberia, Norway, Japan, Italy, the Netherlands and Panama", and that, "therefore, in accordance with Article 28 of the Convention the eight members elected shall be the largest ship-owning nations". (IMCO/A.I/Working Paper 11; IMCO/A.I/SR. 7, pp. 13, 14.) This amendment having been rejected by a vote of 17 to 11, the Liberian delegate proposed that an advisory opinion of the International Court of Justice be sought on the interpretation of Article 28 before voting on the United Kingdom draft resolution and before the election of the Maritime Safety Committee. The President of the Assembly ruled that the voting should proceed. The Liberian delegate stated that he would not challenge the President's ruling, but observed that " a very thorny legal problem would arise should the International Court of Justice find that the Maritime Safety Committee had been established illegally". (IMCO/A.I/SR. 8, p. 10.)

The Assembly, having adopted the United Kingdom draft resolution, by 18 votes to 9 with 1 abstention, as Resolution A. 9 (I) (document IMCO/A.I Resolution 9), then proceeded to the election of the Maritime Safety Committee in accordance with its terms. The Secretary-General's list (IMCO/A.I/Working Paper 5) read as follows:

[1] The Lloyd's Register of Shipping, London, is one of the principal "classification societies" supervising the building of sea-going vessels. Lloyd's Register issues annual records of the principal features of sea-going vessels over 100 gross register tons. See J. Bes, "Chartering and Shipping Terms", Amsterdam, 1951, Chapter XI.

"Merchant fleet of the IMCO members according to the Lloyd Register of Shipping Statistical tables 1958

	Countries	*Registered Tons gross*
1	U.S.A.	25,589,596
2	Great Britain and Northern Ireland	20,285,776
3	Liberia	10,078,778
4	Norway	9,384,830
5	Japan	5,465,442
6	Italy	4,899,640
7	Netherlands	4,599,788
8	Panama	4,357,800
9	France	4,337,935
10	Germany	4,077,475"

The Secretary-General's list also included fifteen other IMCO Member States in order according to the size of their respective registered tons gross, and six IMCO Members for whom no statistics appeared in the Lloyd's Register. Thus, under the terms of Resolution A. 9 (I), by which the first eight nations on this list receiving a majority vote were to be declared elected, the Assembly could have elected eight IMCO Members at the bottom of the list, i.e. with the smallest amount of registered tonnage and even with no registered tonnage.

On separate roll-call votes, the election took place as follows:

1. United States of America—elected 27-0-1 [1]
2. United Kingdom of Great Britain and Northern Ireland—elected 27-0-1
3. Liberia—not elected 11-14-3
4. Norway—elected 25-0-3
5. Japan—elected 25-0-3
6. Italy—elected 25-0-3
7. Netherlands—elected 25-0-3
8. Panama—not elected 9-14-5
9. France—elected 23-2-3
10. Federal Republic of Germany—elected 23-2-3 (IMCO/A.I/SR. 8, pp. 11-20).

The United States delegate who had voted against the election of France and the Federal Republic of Germany explained "that the United States was opposing them only as two of the eight

[1] The Argentine delegate abstained from voting, stating after the vote, that "the only possible legal solution was to refer the matter to the International Court of Justice". (IMCO/A.I/SR. 9, p. 3.) Note that only fourteen members of IMCO voted against Liberia and Panama, not even a majority of the IMCO membership.

members, to be consistent with the legal principle it had maintained throughout, but certainly was not opposing them for election to other seats of the Committee". (IMCO/A.I/SR. 8, p. 21.)[1]

The delegates of Liberia and Panama each stated that they had abstained from voting after the vote on Liberia, since the election was "null and void". (IMCO/A.I/SR. 8, p. 21; IMCO/A.I/SR. 9, p. 2.)

After the Assembly had proceeded to fill the remaining six seats of the Committee, electing Argentina, Canada, Greece, Pakistan, U.S.S.R. and the U.A.R., at its ninth meeting on January 15, 1959 (IMCO/A.I/SR. 9, p. 5), the Liberian delegation introduced a draft resolution (IMCO/A.I/Working Paper 12) requesting an advisory opinion from the International Court of Justice on the interpretation of Article 28 of the Convention. (IMCO/A.I/SR. 9, p. 6.)

On motion of the Netherlands delegate, the Assembly deferred consideration of the Liberian draft resolution for twenty-four hours. (*Id.*, p. 7.) Accordingly, the Assembly next considered this item at its tenth meeting on January 16, 1959.

At the tenth meeting on January 16, 1959, the Netherlands delegate stated that his delegation "did not believe it necessary or even strictly appropriate for the Assembly to seek the advisory opinion of the International Court of Justice"; but that his delegation "did not wish to stand in the way of the Liberian delegation's desire to obtain an authoritative opinion of the International Court of Justice", so would abstain on the Liberian proposal but would take part in the discussion in the Legal Committee. (IMCO/A.I/SR. 10, pp. 3, 4.)

The delegate of the United Kingdom, in order to expedite the work of the Assembly, then proposed amending paragraph 2 of the Liberian draft resolution to read:

> "That the formulation of the questions to be referred to the Court should be as follows: (1) Must the 'eight largest ship-owning nations' be determined solely according to the tonnage on the national register? (2) If so, is the Assembly under a legal obligation

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[1] The United States delegation had been instructed to support the principle that the correct interpretation of the language in Article 28 *(a)*, "of which not less than eight shall be the largest ship-owning nations" was that the language meant those eight IMCO nations with the largest total registered tonnage of ships flying the respective flags of each of the eight governments. The United States position was based upon principle, without reference to any specific State or States. At the time the United States Delegation departed for the Assembly, the following were the first eight IMCO Members in order of gross tonnage on Lloyd's Register for 1958: United States, United Kingdom, Japan, Italy, Netherlands, France, Canada, and Argentina. Germany, Liberia, Norway and Panama were not then IMCO Members, but became IMCO Members shortly before or concurrently with the opening of the Assembly on January 6, 1959.

After the election of the Committee, the United States delegation made a declaration for the record to the effect that the United States would participate fully in the work of the Maritime Safety Committee, but without prejudice as to the legal position of the United States regarding the validity of the election of the first eight members of the Maritime Safety Committee. (IMCO/A.I/SR. 9, p. 6.)

to elect to the Maritime Safety Committee the governments of the nations having the largest registered tonnage?"

The United Kingdom delegate stated that "formulation reproduced the essence of the controversy"; and that if the Assembly accepted the United Kingdom amendment, "there would be no need to refer the matter to the Legal Committee of the Assembly". (*Id.*, p. 4.)

The United States delegate "asked the United Kingdom delegation whether their proposal meant that Liberia and Panama otherwise met the qualification of Article 28, or was only half the problem being referred to the International Court of Justice?" The United Kingdom delegate said "that his delegation did not think that Liberia and Panama met any of the criteria in Article 28, but the main point at issue was whether the eight countries should be elected solely on the basis of registered tonnage". (*Id.*, p. 5.)

The consensus of the Assembly was that the formulation of the question for the Court should be referred to the Legal Committee, and the Liberian draft resolutions was "accepted in principle". (*Id.*, p. 6.)

The Legal Committee met immediately and discussed the issues extensively in three separate meetings, on January 16, 17 and 19. (IMCO/A.I/LEG/SR. 4—SR. 5—SR. 6.) (In addition, a "working group" composed of delegates of France, Liberia, the United Kingdom and the United States met on January 16 and 17, in an effort to formulate a text.) The debate in the Legal Committee centered about the scope of the question to be put to the Court. The United Kingdom delegation maintained that there was but one issue to go to the Court, namely: "Must the eight 'largest shipowning nations' be determined solely according to the tonnage on the national register?" (IMCO/A.I/LEG/Working Paper 7.) The Liberian and United States delegates pointed out that if the Court were limited to this text, the Court would have to answer "no" to the question, because Article 28 also contains the criterion of "an important interest in maritime safety". It was also pointed out that in the Assembly the United Kingdom delegation had challenged the interest of Liberia and Panama in maritime safety, thus placing this specifically in issue.

During this debate, the President of the Assembly, Mr. Audette (Canada), intervened with a compromise proposal (IMCO/A.I/LEG/Working Paper 9, Annex 10) to forward to the Court, together with various Assembly Papers, the simple question: "Is the Maritime Safety Committee of IMCO, which was elected on January 15, 1959, constituted in accordance with the Convention of IMCO?" On motion of the United States delegate, and over the protest of the United Kingdom delegate, the Legal Committee voted to submit Mr. Audette's proposal to the Assembly as the action favored by the Legal Committee. The vote, on roll-call, was: 8 for (Argentina, France, Greece, Israel, Japan, Liberia, Panama, United States); 2 against (U.S.S.R., United Kingdom); 3 abstentions (Italy, Netherlands, Norway). (IMCO/A.I/LEG/SR. 6, p. 8.)

When the Assembly considered this item again on January 19, 1959 (IMCO/A.I/SR. 11), there was submitted to it a draft resolution by the United Kingdom, Liberia and Panama, based upon Mr. Audette's proposal. This resolution was adopted by the Assembly as IMCO/A. 12 (I) which was transmitted to the Court on March 23, 1959.

II. Summary of Argument

The one issue before the Court is whether the Maritime Safety Committee of IMCO has been constituted in accordance with the IMCO Convention.

The provision specifically relating to the composition of the Committee appears in Article 28 *(a)*, which establishes criteria which the IMCO Assembly is bound to observe in performing its function of constituting this Committee. The Assembly does not have complete freedom of choice in this matter: it is mandatory for the Assembly to elect to the Committee fourteen nations "having an important interest in maritime safety" of which "not less than eight shall be the largest ship-owning nations". In other advisory opinions, the Court has established the principle that an organ of an international organization must look to the terms of the charter from which it derives its competence, in making its decisions in connection with its functions. Nevertheless, the first eight members of the Maritime Safety Committee were elected on the basis of a procedure which clearly disregarded the requirement of Article 28 *(a)* of the Convention.

In considering the IMCO Convention in its entirety to determine its meaning, in accordance with the practice of the Court, it becomes apparent why the framers of the Convention inserted these specific criteria in Article 28 with respect to the composition of the Maritime Safety Committee.

The first and foremost objective of this international organization is to promote the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation. (In this connection, the Safety of Life at Sea Convention, 1948, negotiated contemporaneously with the IMCO Convention, confers important functions upon IMCO, and specifically upon IMCO's Maritime Safety Committee.) This is the underlying reason for the requirement that all members of the Maritime Safety Committee must have an "important interest in maritime safety" and that the "eight largest ship-owning nations" must be included. Liberia and Panama were two of the eight largest ship-owning nations, and by virtue thereof, as well as by their participation in maritime safety activities, they should be deemed to have an important interest in maritime safety.

International law recognizes the right of every sovereign State to decide which vessels may have the right to fly its flag, and to

prescribe the rules for registration of vessels under its flag. Under international law, the State of the flag of registry is responsible for the adoption of maritime safety practices with respect to its registered shipping. Therefore in the light of the basic objective of the Convention the expression "ship-owning nations" in Article 28 *(a)* means nations of registry. This is borne out by the Safety of Life at Sea Convention, 1948, which provides: "The ships to which the present Convention applies are ships registered in countries the Governments of which are Contracting Governments..." (Article II.) The "largest" ship-owning nations are to be determined by registered tonnage as set forth in the Secretary-General's list—the only statistics bearing on the point which were before the Assembly. The importance of tonnage to IMCO is shown by the requirement that at least seven IMCO Members "each have a total tonnage of not less than 1,000,000 gross tons of shipping "as a condition precedent for the IMCO Convention to enter into force (Article 60). Also, IMCO Members have been assessed largely on the basis of their respective gross registered tonnages.

Nevertheless, there have been excluded from the Maritime Safety Committee two of the eight largest ship-owning IMCO Member States which have the responsibility, under international law, for the adoption of maritime safety practices with respect to approximately 15,000,000 tons of shipping. It seems clear that this interpretation of the IMCO Convention, by those delegations voting to exclude these two IMCO Members from the Committee, can only serve seriously to impede the work of the Committee in carrying out its objective of promoting maritime safety; and that consequently, such an interpretation is inadmissible as being completely contrary to the spirit of the clauses providing for the creation of the Committee.

It is submitted to the Court, in conclusion, that any election of the Maritime Safety Committee must include those IMCO Members which are the eight largest ship-owning nations, that such nations (as the Convention necessarily implied) have by reason of their ranking size the required interest in maritime safety (a conclusion reinforced in the present instance by the demonstrated interest of Liberia and Panama), and that the eight largest ship-owning nations can only be determined by reference to gross tonnage registered under the nations' flags. To exclude two of these eight would frustrate the purpose of the IMCO Convention which is to promote maritime safety to the greatest extent possible. Since Liberia and Panama, although so qualified, were deliberately excluded from the Committee, it is the view of the United States that the Committee has not been constituted in accordance with the IMCO Convention.

III. Argument

A. *In constituting the Maritime Safety Committee, the IMCO Assembly was bound to comply with the terms of the Convention. In particular, the Assembly was bound to observe the criteria of Article 28 relating to the composition of the Committee.*

In its Advisory Opinion of May 28th, 1948, *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, the Court stated:

> "The political character of an organ cannot release it from the observance of treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution..." (*I.C.J. Reports 1947-1948*, pp. 57, 64.)

In that Opinion, it will be recalled, the Court concluded that a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article.

In another Opinion, *Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa*, June 7th, 1955, the Court was requested by the General Assembly to elucidate the correct voting procedures to be followed by that body in connection with reports and petitions concerning the Territory of South-West Africa. The Court concluded unanimously that the General Assembly rule requiring a two-thirds majority vote for decisions on such questions constituted a correct voting procedure.

The Court's Opinion stated:

> "... It is from the Charter that the General Assembly derives its competence to exercise its supervisory functions; and it is within the framework of the Charter that the General Assembly must find the rules governing the making of its decisions in connection with those functions. It would be legally impossible for the General Assembly, on the one hand, to rely on the Charter in receiving and examining reports and petitions concerning South-West Africa, and, on the other hand, to reach decisions relating to these reports and petitions in accordance with a voting system entirely alien to that prescribed by the Charter." (*I.C.J. Reports 1955*, pp. 67, 76.)

Separate opinions were filed by Judges Basdevant, Klaestad and Lauterpacht in this proceeding, all of which appear to support a conclusion that the IMCO Assembly, in constituting the Maritime

Safety Committee, was bound to observe the criteria established by Article 28 of the IMCO Convention.

Thus, Judge Basdevant observed:

> "On peut ajouter que lorsque l'avis de 1950 a énoncé que, dans l'exercice de sa surveillance, l'Assemblée générale devrait se conformer, autant que possible, à la procédure suivie par le Conseil de la Société des Nations, il a entendu que l'Assemblée aurait, à cet égard, un certain pouvoir d'appréciation en vue de déterminer dans quelle mesure cette conformité lui paraîtrait possible. Cela se comprend très bien quand il s'agit de déterminer par quel organe elle se fera assister et de quelle façon: cela peut rester à la discrétion de l'Assemblée générale. *Il en va tout autrement de la manière dont elle prendra ses décisions: ce n'est point là matière ouverte à sa discrétion.* Il ne saurait dépendre de l'Assemblée générale et de l'appréciation des possibilités qu'elle pourrait entrevoir à cet égard, de modifier ce que prescrit l'article 18 de la Charte pour l'adapter plus ou moins aux méthodes en usage à la Société des Nations pour les décisions du Conseil. L'avis de 1950 n'a pu supposer et par conséquent admettre que l'Assemblée générale fût investie d'un tel pouvoir dans le cas actuellement considéré." (*Id.*, p. 82. Underscore supplied.)

In his separate opinion, Judge Klaestad stated:

> "When the Court delivered its Advisory Opinion of 1950, it was not unaware of the fact that the Charter of the United Nations had rejected the principle of unanimity, and when the Court expressed the view that the supervisory functions with regard to the Territory of South-West Africa, previously exercised by the Council of the League, were henceforth to be exercised by the General Assembly of the United Nations by virtue of Article 10 of the Charter, it was implicitly referring to that body with the organization and functions conferred upon it by the provisions of the Charter, including the provisions of Article 18". (*Id.*, p. 86.)

The following language of Judge Lauterpacht's opinion seems most applicable to the circumstances of the present case:

> "Principle would seem to demand that whenever the basic instrument of a corporate political body prescribes the manner in which its collective will is to be formed and expressed, that basic instrument is in this respect paramount and overriding and nothing save a constitutional amendment as distinguished from legislative action can authorize an alternative procedure of voting." (*Id.*, p. 109.)

Article 28 *(a)* of the IMCO Convention establishes two basic criteria governing the composition of the Maritime Safety Committee which are relevant to the question of law now presented to the Court: first, all fourteen of the members of the Committee must be nations "having an important interest in maritime safety"; and second, not less than eight of the members of the Committee must be "the largest ship-owning nations".

As constituted by the election held by the IMCO Assembly on January 15, 1959, the Committee does not include Liberia or

Panama. Article 28 *(a)* of the IMCO Convention requires that the Committee include both Liberia and Panama, however, because each is qualified for membership since it is a nation "having an important interest in maritime safety", and each is required to be elected to the Committee since it is one of the eight "largest ship-owning nations".

B. *Liberia and Panama are qualified for the Maritime Safety Committee on the basis of their important interest in maritime safety.*

It should be noted at the outset that the language of Article 28 *(a)* itself appears to be based on the unstated assumption that a large ship-owning nation automatically has an important interest in maritime safety. For instance, the English language text reads:

> "... those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations..."

It is significant that the phrase does not read: "... of which not less than eight shall be the largest ship-owning nations *among those having an important interest in maritime safety*", as would be required by logic unless it were assumed that the largest ship-owning nations must necessarily have an important interest in maritime safety, so that no further qualification was required. Further, the Article then continues as follows:

> "... and the remainder shall be elected so as to ensure adequate representation of Members, governments of *other* nations with an important interest in maritime safety..." (Underscore supplied.)

Again, the clear implication is that each of the largest ship-owning nations necessarily has an important interest in maritime safety, while *other* nations would have an important interest only for other reasons, such as their supplying large numbers of crews, or carrying large numbers of passengers [1].

Thus it may be inferred from the language itself that one of the largest ship-owning nations was automatically a nation with an important interest in maritime safety. This inference of course is a reasonable one in view of the fact that it is only the nation of

[1] The Indian delegate, when the drafting of the Convention was being discussed in 1946, "wished, in connection with the importance of the Maritime Safety Committee to seafaring nations, as explained by the Danish delegation, to point out the interest that other countries had in these matters. These interests could be divided into three main categories, namely, the interest that resulted from *(a)* the safety of cargoes carried, *(b)* the safety of the passengers carried (e.g. pilgrims), and *(c)* the crews of vessels (e.g. Lascar seamen). These three categories, the Indian delegate felt, would make it clear how vital matters of maritime safety could be to non-seafaring nations, that is to say, to nations who did not actually own or have a large number of merchant vessels". United Maritime Consultative Council, Washington, D.C., document UMCC 2/41, p. 18, October 14, 1946. The records of this Council are appended to this statement as Annex I.

registry which can impose safety regulations on its flag vessels on the high seas, and a nation which has the right to impose and the obligation to enforce such regulations on a large amount of tonnage necessarily has an important "interest" in the subject. On this basis alone, therefore, both Liberia and Panama were qualified as "nations having an important interest in maritime safety".

But in the present case, this result is reinforced by the demonstrated important interest of Liberia and Panama in maritime safety, a criterion which, under Article 28 *(a)* applies not only to the eight largest ship-owning nations, but to all fourteen members of the Committee[1]. Surely a State has an "important interest in maritime safety" when it actively participates in international maritime safety programs, including particularly participation in IMCO itself, and when it accepts substantive international responsibilities under such conventions as the Load Line Convention, signed at London on July 5, 1930, and the Safety of Life at Sea Convention, with Regulations, signed at London on June 10, 1948.

With specific regard to Liberia and Panama, which seek the Court's affirmation of their treaty right to serve on the Maritime Safety Committee, it should be noted that these two nations were among the twenty-eight United Nations Members represented at the first IMCO Assembly, although all eighty-one Members of the United Nations were eligible to join IMCO and to be represented at the IMCO Assembly as a matter of right under Article 6 of the Convention.

In addition, Liberia and Panama have accepted the international obligations of the Load Line Convention, 1930, and of the Safety of Life at Sea Convention, 1948. Both countries participate in the North Atlantic Ice Patrol, and Liberia also participated in the IMCO Sub-Committee on Tonnage Measurement, London, July, 1959, which by Resolution A. 4 (I) was open, with voting rights, to all IMCO Members wishing to participate.

Some delegations at the IMCO Assembly opposed the election of Liberia and Panama as members of the Maritime Safety Committee on the ground that these two IMCO Members failed to meet the qualification of having "an important interest in maritime safety". The United Kingdom delegate advanced the principal argument, and it is so significant that it is here quoted at some length. The summary record of his statement contains the following:

> "There was clearly no question of dealing with the problem of flags of convenience, which lay outside the limits of that discussion. What the Assembly had to do was to choose eight countries which, on the one hand, had an important interest in maritime safety and,

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[1] In addition to the United States, the United Kingdom, Norway, Japan, Italy, the Netherlands, France and the Federal Republic of Germany, the following IMCO Members were elected to the committee: Argentina, Canada, Greece, Pakistan, U.S.S.R., U.A.R.

on the other hand, were the largest ship-owning nations, as those were the criteria laid down in Article 28 of the Convention.

In regard to Liberia's interest in questions of maritime safety, it was undeniable that the vessels registered in that country were among the most modern and most up-to-date in the world. That was because the Liberian merchant navy belonged largely to excellent American ship-owners and, furthermore, because Liberia left questions of marine safety and administration to the very experienced Classification Societies such as Lloyd's Register and the American Bureau. The same was true of Panama. But the matter in hand was not the election of United States ship-owners or of the Classification Societies to the Maritime Safety Committee. What the Assembly had to do was to consider how far governments were interested in maritime questions and see to what extent they were able to make a contribution in various fields connected with safety, such as the examination of masters, mates and engineers, the training of surveyors, the conducting of inquiries after collisions, the handling of dangerous cargoes, etc. It was obvious that in all those fields neither Liberia nor Panama was, at the moment, in a position to make any important contribution to maritime safety. The United Kingdom hoped both countries would make such rapid progress as to permit of their entry to the Committee at a later date.

As to the second criterion he had mentioned, namely, relative importance as a ship-owning nation, he would emphasize that that expression was being used for the first time, but it was perfectly clear. Vessels had really to belong to the countries in question, which was obviously not the case with Panama and Liberia.

Thus, neither from the point of view of interest in maritime safety nor from that of tonnage could Liberia or Panama be included amongst the eight maritime countries referred to in Article 28 *(a)* of the Convention.

He drew particular attention to the fact that the election of those two countries to the Maritime Safety Committee would have the result of excluding France and the Federal Republic of Germany from the Committee. It could not be denied that the two latter countries could contribute much more to maritime safety than could Liberia and Panama. He urged representatives not to forget that the practical objective they were pursuing was to ensure the safety of human life at sea. The United Kingdom delegation thought it would not be right to choose, for the attainment of that purpose, two countries which had neither the experience nor the necessary capacity for the task."

Although certain other nations supported the position of the United Kingdom, no other arguments were advanced as to why Liberia and Panama were not qualified as being among the eight largest ship-owning nations having an important interest in maritime safety. (IMCO/A.I/SR. 7, pp. 2-4.)

The argument, in brief, was that (1) the Marine Safety and Administration of the Fleet was handled by Classification Societies such as Lloyd's Register and the American Bureau, (2) that the criterion was not whether the particular ship-owning nation had an important

interest in maritime safety (even though at the opening of the statement this was admitted to be the question before the Assembly), but rather whether they were able to make a contribution in various fields connected with safety, and (3) that in determining what was a "ship-owning nation" the "vessels had really to belong to the the countries in question", as distinguished from the criterion of the flag flown. While the third point is discussed in more detail under Section C of this statement *infra*, it might be noted at this point that again the argumentation was contrary to the initial statement that "There was clearly no question of dealing with the problem of flags of convenience".

The argument that Liberia and Panama left questions of maritime safety and administration to Classification Societies is completely met by the express provision of Regulation 6 annexed to the Safety of Life at Sea Convention, 1948, accepted by both Liberia and Panama, which states:

> "The inspection and survey of ships, so far as regards the enforcement of the provisions of the present regulations for granting exceptions therefrom, shall be carried out by officers of the country in which the ship is registered, provided that the *Government of each country may entrust the inspection and survey either to surveyors* nominated for the purpose *or to organizations recognized by it.* In every case the Government concerned fully guarantees the completeness and efficiency of the inspection and survey." (Underscore supplied.)

Both the American Bureau of Shipping and Lloyd's Register of Shipping are officially recognized Classification Societies [1]. They are used for this purpose by the United States and other maritime countries. The very fact that Liberia and Panama saw fit to make use of well-recognized organizations to ensure proper safety precautions on their flag vessels shows their interest in maritime safety.

To what extent nations were to make a contribution in various fields connected with safety was not the primary question which should have been before the Assembly, namely, whether the nations had an "important interest in maritime safety". As has been stated above, nations without any merchant fleet at all might have such an important interest. In any event, the Convention was obviously designed to place the eight largest ship-owning nations on the Maritime Safety Committee in the light of the contribution to safety at sea which they could make not only through the work of that Committee but also through their control of a substantial amount of tonnage afloat. As is pointed out under Section C of this statement, *infra*, only the nation of the flag of the ship is in the position to see that the ships under its flag observe proper requirements.

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[1] J. Bes, "Chartering and Shipping Terms", Amsterdam, 1951, p. 164.

It was admitted by all, as the United Kingdom stated, that the fleets of Liberia and Panama "were among the most modern and up-to-date in the world". With specific regard to the merchant ships registered under the flags of Liberia and Panama, the Bulletin of the American Bureau of Shipping for February 1959 states at pages 9 and 10:

> "Lately there have appeared in the newspapers and magazines of the world many articles concerning the tremendous growth of the merchant fleets registered under the flags of Liberia and Panama. The inference has frequently been drawn that the ships of these fleets are sub-standard with respect to design, maintenance, safety equipment, etc. This has been a matter of considerable concern to the American Bureau of Shipping when it is recognized that approximately 57 percent by numbers and 64 percent by gross tonnage of the Liberian fleet, and 45 percent by numbers and 56 percent by gross tonnage of the Panamanian fleet, are Classed with us. It can truthfully be said with respect to those ships Classed with the Bureau that any such implications are entirely unwarranted. From the standpoint of original design, maintenance and safety, the ships of these fleets compare most favorably with the fleets of any of the other maritime nations in which the Bureau has active participation.
>
> "There is in some quarters a belief that the fleets of Liberia and Panamanian registry are comprised largely of older ships sold out from under the flags of original registry as they are replaced by newer and more modern ships. The following figures will indicate how completely unfounded are any such beliefs insofar as the ships in Class with the Bureau are concerned. Of the 572 Liberian ships totaling over 7,000,000 gross tons in Class with the Bureau, only 23, or about 4 percent, totalling 180,000 gross tons were built prior to the World War II construction program. Of the 249 Panamanian ships totaling 2,450,000 gross tons now in Class with the Bureau, only 32, or less than 13 percent, totalling 223,000 gross tons were prewar built. Of these ships, many were extensively altered and modernized to suit them for their present services as a part of the postwar reconversion program.
>
> In the Classed Liberian fleet, 263 totalling 4,650,000 gross tons, which is 66 percent of the total gross tonnage, and in the Classed Panamanian fleet 65 totalling 940,000 gross tons, which is 38 percent of the total gross tonnage, are less than 15 years old. Of the Liberian fleet, 209 totalling 3,850,000 gross tons, which is 55 percent of the total gross tonnage in Class, and of the Panamanian fleet 40 totalling 575,000 gross tons, which is 23½% percent of the total gross tonnage, are less than five years old.
>
> Since the ships built during the World War II construction programs still comprise a substantial segment of the fleets of many of the traditional maritime nations, nearly everyone associated with these ships is familiar with the fact that, in spite of the urgency with which they were needed, the standards of design and construction were not allowed to suffer. By and large, all of these ships were built to the then highest standards of the classification societies. As far as the postwar-built ships are concerned, all those in Class with the Bureau conform to the standards of our Rules, these being

administered impartially irrespective of the flag of registry. These ships are representative of the most modern up-to-date ships to be found anywhere in the world.

The Governments of Liberia and Panama have entrusted to the Bureau, among a number of other classification societies, not only the inspections customarily carried out to insure the maintenance necessary to continue the Classification of the vessels, but, also, the added inspections required to assure compliance with the provisions of the International Load Line and the Safety of Life at Sea Conventions to which these nations are signatory. The Bureau is fully aware of the responsibilities entrusted to its Surveyors. All inspections are being carried out in a thoroughly diligent manner so as to satisfactorily discharge these responsibilities. In so far as the ships Classed with the Bureau are concerned, there can be no basis for considering these ships to be sub-standard."

C. *Liberia and Panama should have been included in the Maritime Safety Committee as two of the eight "largest ship-owning nations". "Largest ship-owning nations" in Article* 28 (a) *of the IMCO Convention means those nations with the largest registered tonnage.*

Since the controversy in the Assembly related specifically to the meaning of Article 28 of the IMCO Convention, the three equally authentic language texts of this Article are set forth:

English	*French*	*Spanish*
(a) The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, Governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of members, Governments of other nations with an	*(a)* Le Comité de la Sécurité maritime se compose de quatorze Membres élus par l'Assemblée parmi les Membres, gouvernements des pays qui ont un intérêt important dans les questions de sécurité maritime. Huit au moins de ces pays doivent être ceux qui possèdent les flottes de commerce les plus importantes; l'élection des autres doit assurer une représentation	*(a)* El Comité de Seguridad Marítima se compondrá de catorce Miembros elegidos por la Asemblea entre los gobiernos de los países que tengan un interés importante en las cuestiones de seguridad marítima, de los cuales ocho por lo menos, deberán ser aquellos países que posean las flotas mercantes más importantes; los demás seran elegidos de manera que se asegure une representación

English	*French*	*Spanish*
important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas.	adéquate d'une part aux Membres, gouvernements des autres pays qui ont un intérêt important dans les questions de sécurité maritime, tels que les pays dont les ressortissants entrent, en grand nombre, dans la composition des équipages ou qui sont intéressés au transport d'un grand nombre de passagers de cabine et de pont et, d'autre part, aux principales régions géographiques.	adecuada, por una parte a los Gobiernos de los otros países con importantes intereses en las cuestiones de seguridad marítima, tales como los países cuyos naturales entran, en gran número, en la composición de las tripulaciones o que se hallen interesados en el transporte de un gran número de pasajeros con cabina o sin ella, y, por otra parte, a los países de mayor área geográfica.
(b) Members shall be elected for a term of four years and shall be eligible for re-election.	*(b)* Les membres du Comité de la Sécurité maritime sont élus pour une période de quatre ans et sont rééligibles.	*(b)* Los Miembros del Comité de Seguridad Marítima serán elegidos por un período de cuatro años y son susceptibles de reelección.

Thus, these three language texts have the same substantive meanings; and this meaning is clear. The Maritime Safety Committee shall consist of fourteen IMCO Members. Of these fourteen Members, not less than eight "shall be the largest ship-owning nations", "doivent être ceux qui possèdent les flottes de commerce les plus importantes", "deberán ser aquellos países que posean las flotas mercantes más importantes". The text does not say that the Assembly "may" elect eight "of" or "from amongst" the largest ship-owning nations, nor does it say that the Assembly may elect eight "large ship-owning nations". The text clearly stipulates that of the fourteen IMCO Members to be elected to the Committee, "not less than eight *shall* be *the* largest ship-owning nations". As the Committee responsible for the development of the draft of the IMCO Convention stated in 1946, this language meant that the Maritime Safety Committee "will include the largest ship-owning

nations", a matter deemed "of great importance to its successful operation"[1].

As stated above in Section I, the United States has maintained consistently as a matter of principle, without reference to any specific State or States, that the phrase, "the largest ship-owning nations" [1] in Article 28, can only mean those IMCO Member nations with the largest total registered tonnage of ships flying the respective flags of each of the eight governments. It was always the assumption in the negotiations of the IMCO Convention, beginning with the United Maritime Consultative Council of October, 1946, that the term "ship-owning nations", in the provision relating to the composition of the Maritime Safety Committee, meant nations under whose flags ships are registered.

That the phrase "ship-owning nations" is and has been commonly understood in maritime circles to refer to nations of flag of registered tonnage is shown by the Lloyd's Register for 1948, when the Convention was finally negotiated; and by the Lloyd's Register for 1958, on the basis of which the election of the first eight Members of the Maritime Safety Committee was conducted. The first of the tables in Section 5, Statistical Tables for 1948, of Lloyd's Register of Shipping is entitled "TABLE No. 1.—Showing Number, Gross Tonnage, and Material of the Vessels, of 100 Tons and upwards, distinguishing Steamers, Motorships and Sailing Vessels, BELONGING TO the several Countries of the World, as recorded in the 1948-1949 edition of Lloyd's Register Book." Likewise, the names of the several countries are listed in the left-hand column of that table under the heading "COUNTRIES WHERE OWNED" and in the succeeding columns the numbers and gross tonnage of vessels listed with respect to each of the countries are the same as those of the vessels registered under the flag of each of those countries. Likewise, in Lloyd's Register of Shipping for 1958 the names of the several

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[1] The phrase "the largest ship-owning nations" appeared first in Article VII, Section 2, of the Draft Plan for an Inter-Governmental Maritime Consultative Organization, prepared in London, September 1946, in an English language text, by the Committee on a Possible Constitution for an Inter-Governmental Maritime Organization, appointed by the United Maritime Consultative Council. The first sentence of Article VII, Section 2, of the Draft Plan read: "The Maritime Safety Committee shall consist of 12 Member Governments selected by the Assembly from the Governments of those nations having an important interest in maritime safety and owning substantial amounts of merchant shipping, of which no less than nine shall be the largest ship-owning nations and the remainder shall be selected so as to ensure representation for the major geographical areas." This Committee's report contained the following comment on Article VII, Section 2:

"12. The Maritime Safety Committee, as proposed, will include the largest ship-owning nations. This is of great importance to its successful operation. Provision is also made for representation of other ship-owning nations from all parts of the world thus giving recognition to the world-wide interest in the problems involved." United Maritime Consultative Council, Washington, D.C., document UMCC 2/2, October 14, 1946, pp. 6, 11.

countries are listed under the heading "COUNTRIES WHERE OWNED". (Annexes II and III.)

Moreover, under Article 1 *(b)* of the Convention itself, a purpose of IMCO is stated to be to promote "the freedom of *shipping* of *all flags* to take part in international trade". (Underscore supplied.) This obviously refers to the shipping of all "ship-owning nations".

Evidence of the contemporaneous understanding that the phrase "ship-owning nations" meant flag nations, may also be found in the Court's Judgment of April 9th, 1949, *The Corfu Channel Case (Merits)*. In concluding that the North Corfu Channel should be considered an international highway through which passage cannot be prohibited by a coastal State in time of peace, the Court stated:

> "It may be asked whether the test is to be found in the volume of traffic passing through the Strait or in its greater or lesser importance for international navigation. But in the opinion of the Court the decisive criterion is rather its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation. Nor can it be decisive that this Strait is not a necessary route between two parts of the high seas, but only an alternative passage between the Aegean and the Adriatic Seas. It has nevertheless been a useful route for international maritime traffic. In this respect, the Agent of the United Kingdom Government gave the Court the following information relating to the period from April 1st, 1936, to December 31st, 1937: 'The following is the total number of ships putting in at Port of Corfu after passing through or just before passing through the Channel. During the period of one year nine months, the total number of ships was 2,884. *The flags of the ships are Greek, Italian, Roumanian, Yugoslav, French, Albanian and British.* Clearly, very small vessels are included, as the entries for Albanian vessels are high, and of course one vessel may make several journeys, but 2,884 ships for a period of one year nine months is quite a large figure. These figures relate to vessels visited by the Customs of Corfu and so do not include the large number of vessels which went through the Strait without calling at Corfu at all.' There were also regular sailings through the Strait by Greek vessels three times weekly, by a British ship fortnightly, and by two Yugoslav vessels weekly and by two others fortnightly. The Court is further informed that the British Navy has regularly used this Channel for eighty years or more, and that it has also been used by the navies of other States." (Underscore supplied.) (*I.C.J. Reports 1949*, pp. 4, 28, 29.)

It seems evident that "ship-owning nations" means nations of flags of registered tonnage in view of the established rule of international law that the nation of the vessel's flag is the nation directly interested in the safety of the vessel, and alone can impose and enforce safety practices upon the vessel on the high seas.

The Court will recall that the Permanent Court of International Justice had occasion to consider the question of jurisdiction over vessels in its Judgment No. 9, *The Case of the S.S. Lotus* (P.C.I.J., Series A, No. 10). That case arose as a consequence of the collision

on the high seas between the French flag ship, *S.S. Lotus*, and the Turkish flag ship, *S.S. Boz-Kourt*, and the subsequent criminal prosecution in a Turkish court of the watch officer, a French citizen on board the *Lotus*. The Court, by a majority of seven to five, rendered the judgment that there is no rule of international law by virtue of which the penal cognizance of a collision at sea, resulting in loss of life, belongs exclusively to the country of the ship by or by means of which the wrong was done.

This judgment related therefore to the issue of concurrent criminal jurisdiction over vessels on the high seas. In this connection, however, the Court made certain observations which are of significance with respect to responsibility of States for maritime safety practices:

> "1.—The collision which occurred on August 2nd, 1926, between the S.S. *Lotus*, flying the French flag, and the S.S. *Boz-Kourt*, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account [1]."
>
> . . . . . .
>
> "It is certainly true that—apart from certain special cases which are defined by international law—vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, *no State may exercise any kind of jurisdiction over foreign vessels upon them.* Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law." (Underscore supplied.)
>
> . . . . . .
>
> "In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some month's imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.
>
> In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not

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[1] See also *The Muscat Dhows Case* (France and Great Britain), where a tribunal of the Permanent Court of Arbitration stated the principle that "generally speaking it belongs to every sovereign to decide to whom he will accord the right to fly his flag and to prescribe the rules governing such grants, and whereas, therefore, the granting of the French flag to subjects of His Highness the Sultan of Muscat in itself constitutes no attack on the independence of the Sultan; ...". Award, Aug. 8, 1905, Scott, *Hague Court Reports*, pp. 95, 96.

for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression.

The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown." (P.C.I.J., Series B, No. 10, pp. 12, 25, 30.)

In view of the division of the Judges of the Court in this Judgment, it is useful to consider the observations of the dissenting Judges. In his dissenting opinion, Judge Loder stated:

"A merchant ship being a complete entity, organized and subject to discipline in conformity with the laws and subject to the control of the State whose flag it flies, and having regard to the absence of all territorial sovereignty upon the high seas, it is only natural that as far as concerns criminal law this entity should come under the jurisdiction of that State. This applies with especial force to the case now before the Court. The accusation against Lieutenant Demons is that whilst navigating his ship he gave an order for a wrong manœuvre.

The rules for navigation which he was obliged to follow were those contained in his national regulations. He was responsible to his national authorities for the observance of these rules. It was solely for these authorities to consider whether the officer had observed these rules, whether he had done his duty, and, if not, whether he had neglected their observance to such a degree as to have incurred criminal responsibility." (*Id.*, at p. 39.)

Judge Weiss observed, in his dissenting opinion:

"The high seas are free and *res nullius*, and, apart from certain exceptions or restrictions imposed in the interest of the common safety of States, they are subject to no territorial authority. Since, however, it is impossible to allow free scope to all the enterprises and attacks which might be undertaken against the persons and property of those voyaging upon the seas, it has appeared expedient to extend to merchant vessels on the high seas the jurisdiction of the authorities of the State whose flag they fly. These vessels and their crews are answerable only to the *law of the flag*, a situation which is often described by saying, with more or less accuracy, that these vessels constitute a detached and floating portion of the national territory. The effect of this is to exclude, just as much as on the national territory itself, and apart from certain exceptional cases, the exercise of any jurisdiction other than that of the flag, and in particular that of a foreign port at which a vessel may touch after the commission of some offence on the high seas. (Rules drawn up at The Hague by the Institute of International Law in 1908.)" (*Id.*, pp. 45, 46.)

Lord Finlay stated:

> "Turkey's case is that the crime was committed in Turkish territory, namely, on a Turkish ship on the high seas, and that the Turkish Courts therefore have a territorial jurisdiction. A ship is a movable chattel, it is not a place; when on a voyage it shifts its place from day to day and from hour to hour, and when in dock it is a chattel which happens at the time to be in a particular place. The jurisdiction over crimes committed on a ship at sea is not of a territorial nature at all. It depends upon the law which for convenience and by common consent is applied to the case of chattels of such a very special nature as ships. It appears to me to be impossible with any reason to apply the principle of locality to the case of ships coming into collision for the purpose of ascertaining what court has jurisdiction; that depends on the principles of maritime law. Criminal jurisdiction for negligence causing a collision is in the courts of the country of the flag, provided that if the offender is of a nationality different from that of his ship, the prosecution may alternatively be in the courts of his own country." (*Id.*, at p. 53.)

Judge Nyholm expressed the view that there was no "positively established international law" with respect to jurisdiction in case of a collision between two vessels of different nationalities. "Though therefore Turkey's action in this case is not at the present time justified in law, on the other hand it cannot be regarded as aggressive from a moral point of view." (*Id.*, at p. 63.)

As noted above, Judge Moore concurred with the majority of the Court on the issue of concurrent criminal jurisdiction, though dissenting with respect to the connection of the case with the Turkish Penal Code. Attention is called to the following parts of his opinion:

> "4. In conformity with the principle of the equality of independent States, all nations have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation, and no State is authorized to interfere with the navigation of other States on the high seas in the time of peace except in the case of piracy by law of nations or in extraordinary cases of self-defence (Le Louis (1817), 2 Dodson, 210, 243-244).
>
> 5. It is universally admitted that a ship on the high seas is, for jurisdictional purposes, to be considered as a part of the territory of the country to which it belongs; and there is nothing in the law or in the reason of the thing to show that, in the case of injury to life and property on board a ship on the high seas, the operation of this principle differs from its operation on land.
>
> The operation of the principle of absolute and exclusive jurisdiction on land does not preclude the punishment by a State of an act committed within its territory by a person at the time corporeally present in another State. It may be said that there does not exist today a law-governed State in the jurisprudence of which such a right of punishment is not recognized. France, by her own Code, asserts in general and indefinite terms the right to punish foreigners who, outside France, commit offences against the 'safety' of the

French State. This claim might readily be found to go in practice far beyond the jurisdictional limits of the claim of a country to punish crimes perpetrated or consummated on board its ships on the high seas by persons not corporeally on board such ships. Moreover, it is evident that, if the latter claim is not admitted, the principle of territoriality, when applied to ships on the high seas, must enure solely to the benefit of the ship by or by means of which the crime is committed, and that, if the Court should sanction this view, *it not only would give to the principle of territoriality a one-sided* application, but would impose upon its operation at sea a limitation to which it is not subject on land." (*Id.*, at pp. 69, 70.)

Finally, in his dissenting opinion, Judge Altamira made the following pertinent observations:

"In spite of the differences in character which these ten cases present from other points of view, it will be found that they all agree in that they invoke, or recognize (which is the same thing), the prior or exclusive claim of the law of the flag as regards certain acts done on board a ship. It is only for this reason that they are cited here; and the very diversity of the questions of jurisdiction which they concern only serves to affirm the importance of the principle which unites them. There are certainly cases with a contrary tendency such as the Bruges or *West-Hinder* case, but of all those cited the majority are certainly in favour of the principle indicated above.

. . . . . .

In view of the foregoing, I have a very strong hesitation to admit, as a matter of course, and as subject to no doubt, exceptions to the territorial principle (in the application of that principle to the present case), exceptions which it is sought, simply by the will of one State, to extend beyond the limits of those hitherto expressly agreed to in conventions, or tacitly established by means of the recurrence of certain clearly defined and undisputed cases in the majority of systems of municipal law." (*Id.*, at pp. 97, 98.)

To sum up this most fundamental decision of the Permanent Court of International Justice, it would seem that while the Judges were divided on the issue of concurrent criminal jurisdiction in a collision case involving vessels of different flags, all the Judges recognized the basic principle of the jurisdiction of the law of the flag State of registry regarding acts done on board a ship.

This principle is acknowledged in current conventions on maritime matters[1]. Thus, the Safety of Life at Sea Convention, signed at London June 10, 1948, provides in Article II:

[1] It is said that Article 11 of the Convention on the High Seas, Geneva, 1958, will override the Judgment of the Court in the *Lotus* case when the Convention enters into force. However, even when Article 11 enters into force legally, the primary jurisdiction of the flag State will be recognized. Article 11 provides:

"1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal

"The ships to which the present Convention applies are ships registered in countries the Governments of which are Contracting Governments, and ships registered in territories to which the present Convention is extended under Article XIII."

Similarly, Regulation 2 of the Regulations appended to the Convention contains the following definition:

"*(b)* 'Administration' means the Government of the country in which the ship is registered."

The Load Line Convention, signed at London July 5, 1930, contains the following definitions:

"*Article 3*

Definitions

In this Convention, unless expressly provided otherwise—

(a) a ship is regarded as belonging to a country if it is registered by the Government of that country;

(b) the expression 'Administration' means the Government of the country to which the ship belongs; ..." [1]

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or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or license shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State."

Also significant is the following language in Article 6 of the Convention:

"1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas..."

[1] The Court may also be interested in examples of bilateral treaties. In the Treaty of Friendship, Commerce and Navigation between the United States and the Netherlands, signed at The Hague March 27, 1956, Article XIX provides, in part:

"1. Vessels under the flag of either Party, and carrying the papers required by its laws in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party."

A similar provision appears in Article X of the Treaty of Friendship, Commerce and Consular Rights between the United States and Norway, signed at Washington June 5, 1928.

Article X reads:

"*Article X.* Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

Provisions similar to those set forth above appear in treaties of friendship, commerce and navigation and similar treaties which were signed on the dates

Also of interest in this connection are the observations contained in leading international law commentaries.

Thus, the position of the United States as to jurisdiction over merchant vessels was set forth in a communication of May 19, 1914 from the Counselor of the Department of State to the British Ambassador, summarized in Volume II, Hackworth, *Digest of International Law*, § 140. This communication stated in part:

> "Private vessels belonging to this country are deemed parts of its territory. They are accordingly regarded as subject to the jurisdiction of this country, on the high seas, and in foreign ports, even though they admittedly are also temporarily subject generally to the laws of such ports." (*Id.*, at p. 209.)

This Digest also quotes from Nielsen's Report (1926), where a special Anglo-American tribunal rendered an award in favor of Great Britain against the United States, as follows:

> "It is a fundamental principle of international maritime law that, except by special convention or in time of war, interference by a cruiser with a foreign vessel pursuing a lawful avocation on the high seas is unwarranted and illegal, and constitutes a violation of the sovereignty of the country whose flag the vessel flies." (*Id.*, p. 664.)

The Digest also quotes from the United States Supreme Court decision, *Maul* v. *United States* 274 U.S. 501(1927), in part, as follows:

> "The high sea is common to all nations and foreign to none; and every nation having vessels there has power to regulate them and also to seize them for a violation of its laws..." (*Id.*, p. 666.)

It is brought to the attention of the Court that the United States Department of State, by its Foreign Service Regulations, has instructed its officers, with regard to registry of ships, as follows:

> "Under general principles of international and maritime law, crimes and misdemeanors, committed on the high seas and out of the territorial limits of any State, are cognizable only in the courts of the country to which the vessel belongs. For the purpose of prosecuting such crimes, the vessel may be regarded as part of the country of registry." (22 Cumulative Federal Register, Section 83.7, 1958.)

The quoted regulation reflects the concept of the United States Government that a ship's registry determines the nation to which it belongs.

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indicated below and which continue in force between the U.S. and the following countries, respectively: China—November 4, 1946 (Art. XXI), Estonia—December 23, 1925 (Art. X), Federal Republic of Germany—October 29, 1954 (Art. XIX), Finland—February 13, 1934 (Art. XV), Greece—August 3, 1951 (Art. XXI), Honduras—December 7, 1927 (Art. X), Iran—August 15, 1955 (Art. X), Ireland—January 21, 1950 (Art. XVIII), Israel—August 23, 1951 (Art. XIX), Italy—February 2, 1948 (Art. XIX), Japan—April 2, 1953 (Art. XIX), Korea—November 28, 1956 (Art. XIX), Latvia—April 20, 1928 (Art. XI), Liberia—August 8, 1938 (Art. XV), Nicaragua—January 21, 1956 (Art. XIX), Spain—July 3, 1902 (Art. XI). Similar provisions also appear in various treaties which are no longer in force.

In Oppenheim's *International Law*, Vol. I—*Peace* (Seventh Edition, March 1948), the following statements appear pertinent:

Jurisdiction on the Open Sea mainly connected with Flag

"§ 260. Jurisdiction on the open sea is in the main connected with the maritime flag under which vessels sail. This is the consequence of the fact stated above [2] that a certain legal order is created on the open sea through the co-operation of rules of the Law of Nations with rules of the Municipal Laws of such States as possess a maritime flag. But two points must be emphasised. The one is that this jurisdiction is not jurisdiction over the open sea as such, but only over vessels, persons, and goods on the open sea. The other is that jurisdiction on the open sea is mainly but not exclusively connected with the flag under which vessels sail, because men-of-war of all nations have, as will be seen [3], certain powers over merchantmen of all nations. The points which must therefore be here discussed singly are: the claim of vessels to sail under a certain flag, ship's papers, the names of vessels, the connection of vessels with the territory of the flag State, the safety of traffic on the open sea, the powers of men-of-war over merchantmen of all nations, and, lastly, shipwreck."

"[2] See above, § 255."

"[3] See below, § 266."

Claim of Vessels to sail under a certain Flag

"§ 261. The Law of Nations does not include any rules regarding the claim of vessels [1] to sail under a certain maritime flag, but imposes the duty upon every State having a maritime flag to stipulate by its own Municipal Laws the conditions to be fulfilled by those vessels which wish to sail under its flag. In the interest of order on the open sea, a vessel not sailing under the maritime flag of a State enjoys no protection whatever, for the freedom of navigation on the open sea is freedom for such vessels only as sail under the flag of a State. But a State is absolutely independent in framing the rules concerning the claim of vessels to its flag. It can in particular authorise such vessels to sail under its flag as are the property of foreign subjects; but such foreign vessels sailing under its flag fall thereby under its jurisdiction. The different States have made different rules concerning the sailing of vessels under their flags [2]. Some, like Great Britain [3], allow only such vessels to sail under their flags as are the exclusive property of their citizens or of corporations established on their territory. Others allow vessels which are the property of foreigners. Others again, like France [4], allow to sail

"[1] As to what constitutes a vessel see the learned discussion by Gidel, i. pp. 64-71."

"[2] See Calvo, i. §§ 393-423, where the respective Municipal Laws of most countries are given; and Muller, *op cit.*, pp. 363-382."

"[3] See § 1 of the Merchant Shipping Act, 1894, and §§ 51 and 80 of the Merchant Shipping Act, 1906, and Temperley, *Merchant Shipping Acts*, 3rd ed. (1921), by Temperley and W. L. McNair, pp. 1-3 and 495, 496. See also Rienow, *The Test of the Nationality of a Merchant Vessel* (1937)."

"[4] By a law of the 9th June, 1845, which provides that at least one half of the property must belong to French citizens."

under their flags vessels which are only in part the property of their citizens [1]..."

"[1] See Annuaire, 15 (1896), p. 201, for the 'Règles relatives à l'usage du pavillon national pour les navires de commerce', adopted by the Institute of International Law."

. . . . . .

Safety of Traffic on the Open Sea

"§ 265. *The safety of navigation clearly involves common action on the part of the leading maritime States, for if, for instance, the vessels of one State followed one set of rules for the avoiding of collisions and the vessels of another State followed a different set of rules, the result would be chaos. This common action has been achieved mainly by the enactment by the different maritime States of similar or identical regulations, and only to a slight extent by the making of international conventions...*" (Underscore is supplied.)

It should be noted that this edition of this treatise appeared contemporaneously with the United Nations Maritime Conference, held at Geneva from 19 February to 6 March 1948, which formulated the final text of the IMCO Convention. The statements quoted above, it is submitted, represent the contemporaneous understanding of applicable principles of substantive international law which the framers of the IMCO Convention must have had in mind.

A detailed discussion of substantive law may also be found in Higgins and Colombos, *The International Law of the Sea* (second revised edition, 1951). Thus, the treatise states:

Jurisdiction over Merchant Vessels on the High Seas.

"§ 243. Legal position of merchant vessels on the high seas.—The jurisdiction which a State may lawfully exercise over vessels flying its flag on the high seas is a jurisdiction over the persons and property of its citizens; it is not a territorial jurisdiction [1]. The grounds on which this jurisdiction rests arise simply 'from the fact that they are property in a place where no local jurisdiction exists'. It is necessary for many purposes that jurisdiction over a vessel shall be vested in a specific State; it is natural to concede a right of jurisdiction to the owner of property until his claim as such is opposed by a superior title on the part of someone else and 'no right to jurisdiction over a vessel can, within the range of the purposes contemplated, be superior to that of the State owning her'." [2]

"[1] Pearce Higgins, *Le régime juridique des navires de commerce*, Recueil, vol. 30 (1929), pp. 12-76."

"[2] Hall, pp. 301-302; *cf.* Smith, F. E. (Lord Birkenhead), *International Law*, 6th ed., by R. Moelwyn-Hughes 1927), p. 133; Lawrence, *International Law* (Winfield's edition), pp. 210-213."

. . . . . .

"§ 292. Regulation of sea traffic.—Maritime navigation obviously requires for its efficiency that its safety should be secured. We have seen that order on board a merchant vessel is maintained by the disci-

pline enforced by the master exercising the power conferred on him by the flag-State of the ship [1]. As regards freedom of navigation, orderly movement is ensured by adherence to the rules of the road, the use and display of lights and signals and the observance of the general regulations in force for the prevention of collisions. There have been attempts in modern times to arrive at international agreements for increasing the safety of life at sea, although from the earliest days of navigation, seafaring men have been subject to rules dealing with collisions and salvage which may be said to form a 'common law of the sea, adopted by the common consent of States'. This "common law' was binding, not because it was imposed by any superior Power, but because it had been generally accepted as a rule of conduct. Whatever may have been its origin, whether in the usages of navigation or in the ordinances of maritime States, or in both, it has become the law of the sea only by the concurrent sanction of those who may be said to constitute the shipping and commercial world. As regards changes in these rules, they have been accomplished by the concurrent assent, express or understood, of maritime nations. [2]"

"[1] See above, § 256."
"[2] The Scotia, [1871] 14 Wallace 170."

D. *The IMCO Convention should be interpreted and applied so as to give effect to its purposes, and, specifically, so as to enable the Maritime Safety Committee to perform its functions effectively. The exclusion of Liberia and Panama from the Committee will frustrate the primary purpose of the Convention, i.e. the promotion of maritime safety.*

In the Advisory Opinion of April 11th, 1949, *Reparations for Injuries Suffered in the Service of the United Nations*, the Court, in concluding that the United Nations had a necessarily implied capacity to bring an international claim to obtain reparation in connection with injuries suffered by a United Nations agent in the service of the United Nations, made the following pertinent observations:

"The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. *But to achieve these ends the attribution of international personality is indispensable.*" (Underscore supplied.)

. . . . . .

"In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and *it could not carry out the intentions of its founders if it was devoid of international personality.* It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required *to enable those functions to be effectively discharged.*" (Underscore supplied.)

. . . . . .

"The next question is whether the sum of the international rights of the Organization comprises the right to bring the kind of international claim described in the Request for this Opinion. That is a claim against a State to obtain reparation in respect of the damage caused by the injury of an agent of the Organization in the course of the performance of his duties. Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice. The functions of the Organization are of such a character *that they could not be effectively discharged* if they involved the concurrent action, on the international plane, of fifty-eight or more Foreign Offices, and the Court concludes that the Members have endowed the Organization with capacity to bring international claims *when necessitated by the discharge of its functions.*" (Underscores supplied.) (*I.C.J. Reports 1949*, pp. 174, 178, 179, 180.)

In its Advisory Opinion No. 16, *Interpretation of the Greco-Turkish Agreement of December 1st, 1926*, the Permanent Court of International Justice was asked to construe the terms of an international agreement with respect to the functions of an international body. The following observations of the Court in that proceeding appear most relevant to the present case:

"All the duties indicated above are entrusted to the Mixed Commission as the sole authority for dealing with the exchange of populations, and special stress should be laid on the fact that these duties have been entrusted to it with the object amongst others of facilitating this exchange. *It follows that any interpretation or measure capable of impeding the work of the Commission in this domain must be regarded as contrary to the spirit of the clauses providing for the creation of this body.* The Court has already adopted this standpoint in its Advisory Opinion No. 10." (Underscore supplied.)

. . . . . .

"The Court has already indicated the spirit underlying all the international instruments concerning the exchange of Greek and Turkish populations, including the Final Protocol of the Agreement of Athens of December 1st, 1926; it now observes that Article IV

of this Protocol is undoubtedly itself framed in the same spirit. It follows, in the opinion of the Court, that the restriction placed by that article on the general powers of the Mixed Commission cannot constitute an impediment to the fulfilment by the latter of the important duties assigned to it, *but must be construed in such a way as to accelerate and facilitate the progress made by that body with its work.* Speed must be regarded as an essential factor in the work of the Mixed Commission, both in the interest of the populations with which its work is concerned and in that of the Greek and Turkish Governments." (Underscore supplied.) (P.C.I.J., Series B, No. 16, pp. 18, 24.)

The present advisory proceeding, it is submitted, is comparable to that in which the Council of the League of Nations requested the Permanent Court of International Justice to give an advisory opinion on the question: "Does the competence of the International Labour Organisation extend to international regulation of the conditions of labour of persons employed in agriculture?" In that Opinion, *Competence of the International Labour Organisation with respect to Agricultural Labour*, the Court stated:

"In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense." (P.C.I.J., Series B, No. 2, pp. 9, 23.)

Similarly, it is believed that in determining whether the Maritime Safety Committee was established in accordance with the IMCO Convention [1], the Convention should be considered in its entirety.

[1] A useful description of the historical background of the IMCO Convention may be found in the article, "The United Nations Maritime Conference", which appears in the United Nations publication, "Transport and Communications Review", Vol. 1, No. 1, July-September 1948, pages 17-21, inclusive. This article points out that the establishment of IMCO marks the conclusion of a long period of evolution towards intergovernmental cooperation in formulating uniform rules for the regime of maritime navigation. Beginning with the establishment of the non-governmental organization, the International Maritime Committee in 1897, the article relates, the League of Nations era was marked by the formulation of such instruments as the Convention on the International Regime of Maritime Ports (1923), the Safety of Life at Sea Convention (1929), and the Load-Line Convention (1930). After the Second World War, this article observes, there came to be felt need for a permanent international organization within which Governments interested in shipping matters might consult each other. The article states specifically: "Moreover, there was a need for a higher degree of coordination on the international level not only between Governments but between the various techniques and the transport systems utilizing them, particularly in view of the development of the most recent techniques which are used by more than one transport system. In particular, the Second World War stimulated progress considerably in such fields as radio aids to navigation and meteorology, which are of vital interest to aviation and other activities as well as shipping." (P. 19.) After summarizing the decisions of the Maritime Conference, the article concludes:

"By establishing the Inter-governmental Maritime Organization the Maritime Conference filled a gap in a sphere of particular importance for world activities. Henceforth, Governments will have at their disposal a central organ in which

In addition to Article 28 of the Convention, which provides specifically for the composition of the Committee, the Court's attention is invited particularly to Article 1, Article 3, Article 12, Article 16, Article 17, Article 22, Article 29, Article 30, Article 41, Article 42, and Article 60. In the view of the United States, all of these articles are relevant in determining the meaning of the Convention with respect to the composition of the Maritime Safety Committee.

Article 1

The first Article of the Convention sets forth the various purposes of the Organization; and, it is most significant that subsection *(a)* sets forth as the primary purpose of the Organization:

> "to provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and *to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation;*" (Underscore supplied.)

Also pertinent is subsection *(b)*:

> "to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of *shipping of all flags* to take part in international trade;" (Underscore supplied.)

Article 3

Article 3 provides for the functions of the Organization, including primarily the making of recommendations on various shipping matters; the drafting of conventions or other suitable instruments; and providing machinery for consultation among Members.

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they will be able to consider shipping problems of common interest and exchange ideas and information. Being permanent, the organization will make for more continuity and system in the work of international regulation, which has had to be carried on hitherto by means of conferences called at the request of either of the Governments or of one of the many organizations concerned with shipping questions. Shipping will be represented at the international level by a competent organization which will share with other organizations, such as those concerned with civil aviation, telecommunications and meteorology, in the study of common problems—and particularly of the capital problem of safety. The advantages of the closer and more efficient co-operation both between Governments and between international organizations thus made possible at the initiative of the United Nations, will not fail to make themselves felt." (P. 21.)

Article 12

"The Organization shall consist of an Assembly, a Council, a Maritime Safety Committee, and such subsidiary organs as the Organization may at any time consider necessary; and a Secretariat."

According to this provision, the Maritime Safety Committee is a principal and permanent organ of the Organization, as well as the Assembly and the Council. This indicates the importance attached to the Committee and to its work.

Article 16

This Article provides for the functions of the Assembly (which according to Article 13 consists "of all Members"), and authorizes the Assembly, among other things "to recommend to Members for adoption regulations concerning maritime safety, or amendments to such regulations, which have been referred to it by the Maritime Safety Committee through the Council". It is, of course, through the adoption of such regulations by a Member that they become applicable to its flag vessels, and the basic purposes stated in Article 1 *(a)* are thereby achieved.

Article 17

This Article provides that the Council of the Organization shall consist of sixteen Members and shall have a balanced composition between ship-providing and ship-using nations.

Article 22

"*(a)* The Council shall receive the recommendations and reports of the Maritime Safety Committee and shall transmit them to the Assembly and, when the Assembly is not in session, to the Members for information, together with the comments and recommendations of the Council.

(b) Matters within the scope of Article 29 shall be considered by the Council only after obtaining the views of the Maritime Safety Committee thereon."

Article 28

The text of Article 28 is quoted and discussed, *supra*, Section III, C, pages 124-127, inclusive.

Article 29

"*(a)* The Maritime Safety Committee shall have the duty of considering any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety pro-

cedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety.

(b) The Maritime Safety Committee shall provide machinery for performing any duties assigned to it by the Convention, or by the Assembly, or any duty within the scope of this Article which may be assigned to it by any other intergovernmental instrument.

(c) Having regard to the provisions of Part XII, the Maritime Safety Committee shall have the duty of maintaining such close relationship with other intergovernmental bodies concerned with transport and communications as may further the object of the Organization in promoting maritime safety and facilitate the coordination of activities in the fields of shipping, aviation, telecommunications and meteorology with respect to safety and rescue."

Article 30

"The Maritime Safety Committee, through the Council, shall:

(a) submit to the Assembly at its regular sessions proposals made by Members for safety regulations or for amendments to existing safety regulations, together with its comments or recommendations thereon;

(b) report to the Assembly on the work of the Maritime Safety Committee since the previous regular session of the Assembly."

Article 41

"*(a)* Subject to any agreement between the Organization and the United Nations, the Assembly shall review and approve the budget estimates.

(b) The Assembly shall apportion the expenses among the Members in accordance with a scale to be fixed by it after consideration of the proposals of the Council thereon."

Article 42

"Any Member which fails to discharge its financial obligation to the Organization within one year from the date on which it is due, shall have no vote in the Assembly, the Council, or the Maritime Safety Committee unless the Assembly, at its discretion, waives this provision."

In connection with Articles 41 and 42, attention is called to Resolution A. 20 (I), "Apportionment of Expenses among Member States", adopted by the IMCO Assembly on January 19, 1959. Under this resolution, the Assembly has assessed IMCO Members primarily on the basis of their respective gross registered tonnages as shown in the latest edition of Lloyd's Register of Shipping.

This scale of assessments greatly increases the percentage of contributions of those IMCO Members having substantial registered tonnage over what that percentage would be if based on an equal sharing of expenditure by IMCO Members, or if based on the United

Nations system of contribution. Thus, in the case of Liberia, whose total budget assessment for the calendar year 1959 is $16,278.00, $14,278.00 of this total is assessed on the basis of its gross registered tonnage. Of Panama's budget assessment of $8,174.00, $6,174.00 is based on its gross registered tonnage. In the case of Norway's budget assessment of $15,295.00, $13,295.00 is based on registered tonnage. $6,517.00 of the Netherlands' budget assessment of $8,517.00 is based on registered tonnage. Of the United Kingdom budget assessment of $32,738.00, $28,738.00 is based on its registered tonnage; and of the United States budget assessment of $46,252.00, $36,252.00 is based on registered tonnage.

Thus, the first IMCO Assembly has decided that the gross registered tonnage of an IMCO Member is the major factor to consider in determining that Member's share of contribution to the Organization. Under Article 42, of course, any Member which fails to meet the assessment imposed by the Assembly within one year may lose its voting rights in the principal organs of IMCO.

Article 60

> "The present Convention shall enter into force on the date when 21 States of which 7 shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties to the Convention in accordance with Article 57."

The intent of this provision is evident. The framers of the Convention did not consider that IMCO could operate effectively unless States having an aggregate of at least 7,000,000 gross tons of shipping were Members of the Organization. In other words, the criterion of tonnage was used as the essential condition for the very existence of IMCO.

There are attached, for the information of the Court, the notification, by the United Nations, as depositary, of the entry into force of the Convention (Annex IV) and a copy of the letter from the Legal Counsel of the United Nations, Mr. Stavropoulos, dated 10 April 1959, stating that the determination of the tonnage was made *on the basis of the Lloyd's Register*. (Annex V.)

Summary of the IMCO Convention

To sum up, the Convention has established an international maritime organization with a primary purpose "to encourage the general adoption of the highest practicable standard in matters concerning maritime safety and efficiency of navigation". In order to achieve this purpose, the Organization is authorized to make recommendations, and to provide for the drafting of conventions, agreements, or other suitable instruments. A Maritime Safety Committee is established as a principal organ of the Organization, and in addition to the Assembly, a body composed of all Members,

and to the Council, the executive body of the Organization. This Maritime Safety Committee, to be composed of fourteen IMCO Members with an important interest in maritime safety of which not less than eight shall be the largest ship-owning nations, has the duty of considering maritime safety matters, such as aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, and maritime safety procedures and requirements. In addition, the Maritime Safety Committee has the duty to maintain such close relationships with other appropriate intergovernmental bodies as may further the object of the Organization in promoting maritime safety and facilitate the coordination of activities in the fields of shipping, aviation, telecommunications and meteorology with respect to safety and rescue. The Maritime Safety Committee is also directed to submit to the Assembly, through the Council, proposals made by Members for safety regulations or for amendments to existing safety regulations, together with its comments or recommendations thereon. The Assembly is authorized to recommend such regulations and amendments to the Members for adoption, and through their adoption they become binding upon the flag vessels of the respective Members and the basic safety aims of the Convention are accomplished.

It is thus apparent that the provisions of Article 28, which required the eight largest ship-owning nations to be members of the Maritime Safety Committee, were designed to place on the Committee nations with a very substantial amount of tonnage so that they might participate in the promotion and formulation of rules for safety at sea. These were nations that were recognized by the drafters of the convention as having an important interest in maritime safety. They were in a position, through jurisdiction over their flag vessels, to take the necessary action with respect to a substantial part of the world's tonnage. An election procedure which disregarded this basic concept of the convention and prevented the election of two of the eight nations entitled to be members of this Committee could only frustrate the primary purpose of this convention, i.e. the promotion of maritime safety.

IV. Conclusions

On the basis of the foregoing review of principles of law and of the facts, the following conclusions have been reached.

A. In constituting the Maritime Safety Committee, the IMCO Assembly was bound to observe the criteria of Article 28 *(a)* of the IMCO Convention, which required all fourteen of the Members to be nations "having an important interest in maritime safety", of which "not less than eight shall be the largest ship-owning nations". Nevertheless, the election procedure followed by the Assembly

manifestly ignored the explicit requirements of Article 28 *(a)* in that the voting procedure actually followed was to elect the first eight IMCO Members receiving a majority of votes, without regard to the prescribed qualifications.

B. Liberia and Panama were qualified for the Maritime Safety Committee from the standpoint of important interest in maritime safety. The Convention recognizes that this interest, which is a requirement for all fourteen members of the Committee, exists in the eight largest ship-owning nations, which include Liberia and Panama. Moreover, as to Liberia and Panama, it has been demonstrated by the admittedly high standards maintained on the ships under their flags, by their participation in IMCO and desire to serve on the Committee, as well as by their acceptance of other substantive international obligations, including those of the Load Line Convention, 1930 and the Safety of Life at Sea Convention, 1948. In this respect, these two IMCO Members are at least on a par with other IMCO Members who were found qualified for membership on the Committee.

C. Liberia and Panama were among "the eight largest ship-owning nations" of the IMCO Members, and should therefore have been included in the membership of the Maritime Safety Committee. This conclusion is unavoidable on the basis of the listing on the Lloyd's Register, a standard reference for such questions and the only list which was considered as evidence to determine "ship-owning" in the Assembly's election of IMCO Members to the Committee. The listings of gross registered tonnages in Lloyd's was the basis on which "the largest ship-owning nations" should have been determined, particularly as it was also used as the basis for the entry into force of the Convention. Gross tonnage, as shown in the latest edition of Lloyd's Register, was the principal basis for assessment of IMCO Members. To deny the validity of the registration of merchant shipping under a nation's flag as determining the shipping of that nation is in fact to deny the sovereign right of a nation, under international law, to grant its flag to merchant ships and to prescribe the terms of registration of such ships under its flag.

D. The exclusion of Liberia and Panama from the Maritime Safety Committee will frustrate the primary purpose of the IMCO Convention, i.e. "to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation". A particularly serious consequence of this challenge to the flags of these two IMCO Members is that some merchant fleets consisting of some 15,000,000 gross tons will be deprived of representation on this Committee by their flag countries. This will be entirely contrary to the intent of the framers of the Convention, who, from the very beginning, considered the presence

of the largest ship-owning nations on the Committee to be "of great importance to its successful operation." This is readily understandable, for only the nation of flag of registry can adopt and enforce maritime safety regulations for a merchant ship.

It is therefore submitted that since Liberia and Panama were not included in the membership of the Maritime Safety Committee, this Committee was not constituted in accordance with the Convention for the Establishment of the Organization.

Annex 1

DOCUMENTS OF THE UNITED MARITIME CONSULTATIVE COUNCIL, WASHINGTON, D.C.

List of Documents [1]

Draft Agenda	UMCC 2/1, with Addendum 1, 2 and 3
Report on a possible World-Wide Intergovernmental Maritime Organization (Item 1 *(a)* of the Draft Agenda)	UMCC 2/2 [2]
Extracts from temporary Transport and Communications Commission. First Report submitted to the Economic and Social Council 25th May 1946 (Item 1 *(b)* of the Draft Agenda)	UMCC 2/3
Recommendations of the United Maritime Executive Board to Contracting Governments, Fourth Session, 11th February 1946 (Item 2 of the Draft Agenda)	UMCC 2/4
Text of Telegram received from the Secretary-General of United Nations (Item 1 *(b)* of the Draft Agenda)	UMCC 2/5
Resolution adopted by Economic and Social Council, June 21, 1946. Temporary Transport and Communications Commission (Item 1 *(b)* of the Draft Agenda)	UMCC 2/6
Shipping Co-Ordinating and Review Committee Report on the work of the Committee June-September 1946, for submission to United Maritime Consultative Council	UMCC 2/8
List of Members and Secretariat (Revised as of 6:00 p.m., October 24)	UMCC 2/9
Report of the Contributory Nations Committee established under UMEB 4/16 (Item 2 of the Draft Agenda)	UMCC 2/10
Review of the Progress made by the United States in the Restoration of Normal processes in its Shipping	UMCC 2/11
Order of the Day, Thursday, October 24	UMCC 2/12
Order of the Day, Friday, October 25	UMCC 2/13
Minutes of the Opening Plenary Session, Thursday, October 24	UMCC 2/14, with Addendum
Note of the Swedish Government on the Prolongation of United Maritime Consultative Council (Item 1 *(c)* of the Agenda)	UMCC 2/15

[1] By agreement with the Government of the United States of America, these documents are not reproduced, except the extracts set out at pp. 153-160 below.

[2] See extracts at pp. 153-155 below.

Note of the Danish Government on the Prolongation of United Maritime Consultative Council Item 1 *(c)* of the Agenda	UMCC 2/16
Agenda (Revised October 24)	UMCC 2/17
Directory	UMCC 2/18
Scandinavian Delegations' Substitute Proposal for Article 1, London Working Committee Draft (Item 1 *(a)* of the Agenda)	UMCC 2/19 and 19 (Revised)
Minutes of Second Meeting, Thursday, October 24	UMCC 2/20, with Addendum and corrigenda
United States Proposal for a Proposed Inter-Governmental Shipping Organization along the lines of the London Working Committee Draft (Item 1 of Agenda)	UMCC 2/21
Order of the Day, Saturday, October 26	UMCC 2/22
Indian Substitute Proposal for Article 1, London Working Committee Draft (Item 1 *(a)* of Agenda)	UMCC 2/23
Minutes of Third Meeting, Friday, October 25	UMCC 2/24, with Addendum and corrigenda
Revised List of Members and Secretariat	UMCC 2/25 (Revised)
Order of the Day, Sunday, October 27	UMCC 2/26
Suggested Procedure for Establishing Permanent Shipping Organization	UMCC 2/27
Minutes of Fourth Meeting, Friday, October 25	UMCC 2/28, with Addendum 1 and 2 and corrigenda
Draft Convention for an Inter-Governmental Maritime Consultative Organization	UMCC 2/29, 29 (Revised) and 29 (Final) [1]
Minutes of Fifth Meeting, Saturday, October 26	UMCC 2/30, with Addendum and corrigenda
Order of the Day, Monday, October 28	UMCC 2/31
Amendments submitted by Indian Delegation to the Drafting Committee	UMCC 2/32
United Kingdom Draft Recommendations Regarding Inter-Governmental Consultation on Shipping Matters after October 31, 1946	UMCC 2/33
Memorandum of the Brazilian Delegation on the Organization of a Specialized Agency to deal with International Shipping	UMCC 2/34

[1] See extract at pp. 155-156 below. Full text reproduced in document E/CONF. 4/1 of the United Nations Maritime Conference.

Agreement for Provisional Maritime Consultative Council	UMCC 2/35 and 35 (Revised) [1]
Order of the Day, Tuesday, October 29	UMCC 2/36
Order of the Day, Wednesday, October 30	UMCC 2/37
Resolution of the United Maritime Consultative Council, October 30, 1946	UMCC 2/38 and 38 (Revised) [1]
Recommendations of the United Maritime Consultative Council to Member Governments	UMCC 2/39 and 39 (Revised) [1]
Telegram from UMCC to Trygve Lie	UMCC 2/40 and 40 (Final)
Minutes of Sixth Meeting, Monday, October 28	UMCC 2/41, with Addendum [2]
Minutes of Seventh Meeting, Tuesday, October 29	UMCC 2/42, with Addendum
Minutes of Eighth Meeting, Tuesday, October 29	UMCC 2/43, with Addendum and corrigenda
Press Release—Second Session	UMCC 2/44
Chilean Memorandum on Shipping Policies	UMCC 2/45
Minutes of Ninth Meeting, Wednesday, October 30	UMCC 2/46, with Addendum
Minutes of Tenth and final Meeting, Wednesday, October 30	UMCC 2/47
New Zealand Government's Views on Interim and Permanent Shipping Organization	UMCC 2/48

Extracts from Documents filed as Annex 1

UMCC 2/2
October 14, 1946.

REPORT ON A POSSIBLE WORLD-WIDE INTERGOVERNMENTAL MARITIME ORGANIZATION

(For discussion in connection with Item 1 *(a)* of the Draft Agenda)

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COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE TO THE SECRETARY-GENERAL, NETHERLANDS MINISTRY OF SHIPPING

On behalf of the Committee appointed by the United Maritime Consultative Council at its First Session in Amsterdam, I transmit herewith, for submission to the Governments members of the United Maritime Consultative Council, the Report of the Committee with accompanying draft Plan.

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[1] Reproduced in document E/CONF.4/1 of the United Nations Maritime Conference.

[2] *See extracts at pp. 156-160 below.*

The Committee which met in London in July 1946 was composed as follows:—

Monsieur A. van Campenhout	(Belgium)
Mr. A. L. Lawes	(Canada)
Monsieur F. Anduze-Faris	(France)
Mr. J. J. Oyevaar	(Netherlands)
Mr. F. Simonsen	(Norway)
Mr. Z. I. Guzowski	(Poland)
Mr. W. G. Weston	(United Kingdom)
Mr. H. T. Morse	(United States)

At their meeting, the Committee agreed upon the drafts of their Report and of the Plan. Since then a few amendments of a drafting character, designed to emphasize or clarify certain passages in the documents, have been proposed to the Chairman by individual members of the Committee. In exchange of correspondence it has been possible to agree upon some of these which I have incorporated in the texts accordingly. The U.K. member proposed alternative drafts of certain sections of Article VII, which have the concurrence of most of the members of the Committee, but time has not permitted the concurrence of all members to be obtained. The alternative drafts are shown in the accompanying copies of the draft Plan. Certain other small points of phrasing suggested by individual members of the Committee can be raised, if necessary, when the Council meets. Such minor questions of phraseology apart, the proposals in the Report and the draft Plan represent the unanimous opinion of the Committee, and are submitted accordingly for discussion by the Council at the Washington session.

(Signed) W. G. WESTON,
Chairman.
London, September 1946.

DRAFT PLAN FOR AN INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

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Article VII. Maritime Safety Committee

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Section 2. The Maritime Safety Committee shall consist of 12 Member Governments selected by the Assembly from the Governments of those nations having an important interest in maritime safety and owning substantial amounts of merchant shipping, of which no less than nine shall be the largest ship-owning nations and the remainder shall be selected so as to ensure representation for the major geographical areas. The Maritime Safety Committee shall have power to adjust the number of its members with the approval of the Council. No Government shall

have more than one vote on the Committee but delegations may include or be accompanied by advisors. Membership of the Committee shall be for a period of 4 years. Governments shall be eligible for re-election.

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REPORT BY THE COMMITTEE ON A POSSIBLE CONSTITUTION FOR AN INTER-GOVERNMENTAL MARITIME ORGANIZATION

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Article VII, Section 2. 12. The Maritime Safety Committee, as proposed, *will include* the largest ship-owning nations. This is of great importance to its successful operation. Provision is also made for representation of other ship-owning nations from all parts of the world thus giving recognition to the world-wide interest in the problems involved.

In this respect some of the members of the Committee felt that representation on the Maritime Safety Committee should be provided for nations with special interests in the manning of ships. The Committee decided not to make any specific provision of this kind, but it has been considered appropriate to leave the Maritime Safety Committee with power to adjust the number of its members with the approval of the Council.

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UMCC 2/29
(FINAL DOCUMENT)
October 30, 1946.

DRAFT CONVENTION FOR AN
INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

The Governments party to the present Convention hereby establish the Inter-Governmental Martime Consultative Organization (hereinafter referred to as "the Organization").

PART I

Inter-Governmental Maritime Consultative Organization

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[*Article VII*

Maritime Safety Committee

Section 1. The Maritime Safety Committee shall consist of fourteen Member Governments selected by the Assembly from the governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and

the remainder shall be selected so as to ensure adequate representation of other nations with important interests in maritime safety and of major geographical areas. Membership of the Committee shall be for a period of years. Governments shall be eligible for re-election.

Section 2. Subject to the provisions of Section 5 of Article VI, the committee shall have the duty of considering any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety. These duties shall include the task of establishing working relationships with other inter-governmental bodies concerned with transport and communications as may further the object of the organization in promoting safety of life at sea and facilitate the coordination of activities in the fields of shipping, aviation and telecommunications with respect to safety and rescue. The committee shall make regular reports to the Council and make its recommendations in respect of all such matters in accordance with the procedure in Section 5 of Article VI.

Note: The foregoing sections of this Article are tentatively suggested, since the scope and functions of the Maritime Safety Committee will be developed on the basis of the type of a draft convention emerging from the contemplated technical conferences.]

Note: Matter in brackets [ ] is reserved for further consideration.

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UMCC 2/41
October 29, 1946.

DRAFT MINUTES SIXTH MEETING

A copy of the draft minutes of the Sixth Meeting of the Council is circulated herewith by the Secretariat.

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MINUTES SIXTH MEETING OF THE COUNCIL HELD AT THE STATE DEPARTMENT BUILDING LOCATED AT 1778 PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C., AT 2:00 P.M., ON MONDAY, OCTOBER 28, 1946

. . . . . .

98. In regard to *Article VII* (Maritime Safety Committee), *Section 1*, the meeting had before them an Indian alternative draft. *Mr. Weston* informed the meeting that this alternative draft had the general support of the Drafting Committee. The Drafting Committee, however, had not felt empowered to substitute the Indian proposal for the original wording because it involved a matter of principle.

99. *Sir Cyril Hurcomb* stated that the U.K. delegation preferred, as did the Drafting Committee, the Indian amendment.

100. The *Indian representative* here interjected that the alternative draft of the Indian Government, as quoted in the draft now before the committee, required the inclusion of the wording "shall be eligible for re-election" which had been omitted. This inclusion in the alternative was approved.

101. *Mr. Oyevaar* stated that the Netherlands were in favour of the Indian text.

102. *Mr. Morse* stated that the United States delegation had no objection to adopting the Indian alternative draft.

103. The Chairman then inquired whether there were any delegations present who would object to that wording being adopted, and *Mr. Koerbing* stated that he felt obliged to object, but only on account of the fact that adoption of the Indian proposal meant that the Maritime Safety Committee would be composed of twelve member governments of which not less than seven would have to be of the largest ship-owning nations. Before he could agree, he considered that the total number would have to be raised to fourteen member governments of which nine would have to be the largest ship-owning nations.

104. *Mr. Kirpalani* (India) considered that use of the Danish figures was unjustified and that a ration of seven (largest ship-owning nations) to five (other nations) was a fair ratio.

105. *Mr. Koerbing* (Denmark) maintained his point of view that if the number of participating ship-owning nations could be raised from seven to nine and the total number of member governments in the Maritime Safety Committee from twelve to fourteen, the Indian alternative draft would be acceptable to him. He stressed the interest of seafaring nations in the work done by safety at sea conferences. Moreover, it was important that it should not be necessary to refuse membership in the Safety Committee to one or more nations who until now had taken an active interest in the field of international co-operation in regard to safety at sea.

106. The chairman drew attention to the footnote in the draft before the meeting which stated that *Article VII* now under discussion which was bracketed in its entirety, was tentatively suggested since the scope and functions of the Maritime Safety Committee would be developed on the basis of the type of draft convention emerging from the contemplated technical conferences. The remarks made by the various delegations on this point so far, would undoubtedly be very valuable when the matter was brought up at some future date for further consideration.

107. The *Indian delegation* wished, in connection with the importance of the Maritime Safety Committee to seafaring nations, as explained by the Danish delegation, to point out the interest that other countries had in these matters. These interests could be divided into three main categories, namely, the interest that resulted from (*a*) the safety of the cargoes carried, (*b*) the safety of the passengers carried (e.g. pilgrims), and (*c*) the crews of vessels (e.g. Lascar seamen). These three categories, the Indian delegate felt, would make it clear how vital matters of maritime safety could be to non-seafaring nations, that is to say, to nations who did not actually own or have a large number of merchant vessels.

108. The *Indian delegation* had themselves considered having the total number of member governments in their alternative draft put at fifteen instead of twelve, of which not less than eight governments would be the largest ship-owning nations. Those figures, the Indian delegation realized, would hardly have been acceptable to many other countries, and it was for that reason that the total of twelve and the ratio of seven to five was included in the Indian alternative draft.

109. Having referred to the footnote of the present draft of *Article VII*, *Mr. Vellodi* thought it helpful to point out that what was being considered now was not so much the scope and function of the Maritime Safety Committee but the question of membership to which the footnote did not refer.

110. *Mr. Morse* (United States) said that the figures to be used were more or less unimportant to the United States delegation except, of course, for the underlying principle which was generally accepted by all that the largest ship-owning nations should be in predominance on the Maritime Safety Committee.

111. The chairman requested further views on this matter, and *Mr. Oyevaar* of the Netherlands said that he had already signified agreement with the Indian alternative draft but now wondered whether it might not be better to bring the total up from twelve members to fifteen and increase the number of largest ship-owning nations from seven to eight.

112. The chairman, at this juncture, suggested it would be best to vote first on the Indian amendment unaltered and then on that amendment with inclusion of the Danish figures.

113. *Mr. Simonsen* remarked that he was in favour of the Indian amendment in regard to wording but would like to see the Danish figures substituted for the original figures of the Indian delegation.

114. *Mr. Vellodi* (India) said that this would not be acceptable to the Indian delegation while the Danish delegation confirmed that they would agree to that.

115. The chairman then proceeded to obtain the vote of the nations represented round the table on this matter and the consensus was as follows:

116. Australia, *Mr. Faraker*, before giving his opinion, said he would wish to know what the composition of meetings on questions of Maritime Safety had been hitherto.

117. *Sir Cyril Hurcomb* said that the last international gathering on these matters had been in 1929 and that, excluding the nations now classified as "enemy countries", the convention had then been attended by nine ship-owning countries and five others. *Mr. Carter* of the United Kingdom delegation, could, no doubt, give some further information on this point.

118. *Mr. Carter* confirmed the figures as given by Sir Cyril Hurcomb, explaining that Germany, Italy and Japan had in 1929 also attended the convention. That convention had since then been accepted by many other countries. These acceptances, however, had attained a similar ratio of representation by the ship-owning countries and other countries.

119. The chairman thanked Mr. Carter for the information given, and once more requested Australia for their opinion as to which amendment would be preferable.

a. *Mr. Faraker* said that Australia was in favour of the Danish proposal.

b. *Brazil* stated to be in favour of the Danish proposal.

c. *Belgium* suggested figures of 15 in total, of which 9 were to be ship-owning nations. Otherwise, *Mr. Jussiant* preferred the Danish proposal.

d. *Canada* preferred the Danish proposal.

e. *Chile* preferred the Danish proposal.

f. *Denmark* was recorded as preferring the Danish proposal.

g. *France* expressed herself in favour of the Indian proposal.

h. *Greece* was in favour of the Danish proposal.

i. *India* was recorded in favour of the Indian proposal.

j. *The Netherlands. Mr. Oyevaar* said he felt himself in the difficult position of having to choose between "two very goods things" and thought that the best solution surely would be to reconcile the two views. It should be possible to insert such figures in the Indian draft which would make it acceptable both to the Indian delegation and the Danish delegation, as well as to other governments represented. He wondered whether the figures of fifteen in total and eight as membership for seafaring nations might not be suitable. In regard to the voting procedure, he advised that the Netherlands would, in this matter, abstain from voting.

k. *New Zealand* abstained from voting for the same reasons given by Mr. Oyevaar.

l. *Norway* decided in favour of the Danish proposal, especially if the total figures suggested by the Danish delegation for the member governments of Maritime Safety Committee could be increased.

m. *Poland. Mr. Guzowski* was in favour of the Indian proposal, but, with Mr. Oyevaar, hoped and urged that mutual agreement be reached on this point.

n. *South Africa* abstained from voting.

o. *Sweden. Mr. Carlsson* expressed approval of the Danish amendment.

p. *Sir Cyril Hurcomb* said the United Kingdom delegation were in favour of the Indian proposal for the reason that it kept the total number of members lower with advantages both in cost and in efficiency, and also because the ratio of seven to five appeared fairer within a total of twelve than the division provided for by the Danish figures. Although he too considered that a compromise would be most desirable, he could not see how this could very well be hoped for as Mr. Oyevaar had suggested. If raised to the maximum of fourteen, the membership might be divided in the ratio of eight to six. Such a provision might insure more adequate weight for the larger ship-owning nations but, on the other hand, the increase in members from twelve to fourteen *Sir Cyril Hurcomb* did not consider desirable. Certainly, an increase beyond fourteen should, he thought, not be considered. Perhaps, he suggested, it would be better for the meeting to think over these points more clearly and in informal discussion between members some happy solution might be reached. He proposed to keep the matter in abeyance.

q. *Mr. Morse* for the *United States* said that he had not too strong an opinion on this matter either way.

121. The chairman suggested that this matter be held in abeyance and wondered whether Mr. Carter, as the United Kingdom expert, and Captain Merrill as an expert on the USA delegation, would be available to arrange for this matter to be discussed informally with the representatives of Denmark and India being present at the discussions.

122. The *Indian Delegation* wished to thank *Sir Cyril* for the line he had taken and the advice he had given the Council. The Indian delegation went on to stress that it was the ratio that mattered to India, not the total.

123. *Mr. Koerbing* (Denmark) hastened to point out that the matter of voting power in the Maritime Safety Committee should not have so much bearing on the opinion of the meeting as it appeared to have. Experience had shown that all present at meetings concerning matters of maritime safety were anxious to secure the best possible provisions for safety at sea that were practicable. There never had been and, he trusted, never would be a real difference of opinion in this respect. As maritime safety was a question of technical knowledge of the practical possibilities of the steps to be undertaken to secure increased safety, it was logical that seafaring nations who, as a matter of course, had experts on these subjects available, held a predominant position.

124. The *Indian Delegation* again referred to the interest in safety matters for nations which did not have a large ownership interest in shipping.

125. The chairman proposed that this question be decided in an informal discussion under the guidance of *Mr. Carter* and *Captain Merrill*. This was agreed upon.

126. In reply to a question by *Mr. Guzowski*, *Mr. Morse* stated that had a settlement in this matter been forced by voting, the United States of America would have abstained.

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Addendum to
UMCC 2/41
October 30, 1946.

MINUTES OF SIXTH MEETING

The Minutes of the Sixth Meeting were confirmed in the Ninth Meeting held on Wednesday, October 30, and were originally circulated as UMCC 2/41.

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Annex II

LLOYD'S REGISTER OF SHIPPING. STATISTICAL TABLES 1948.

TABLE No. 1

SHOWING NUMBER, GROSS TONNAGE, AND MATERIAL OF VESSELS OF 100 TONS AND UPWARDS, DISTINGUISHING STEAMERS, MOTORSHIPS, AND SAILING VESSELS, BELONGING TO THE SEVERAL COUNTRIES OF THE WORLD, AS RECORDED IN THE 1948-1949 EDITION OF LLOYD'S REGISTER BOOK

[Not reproduced]

Annex III

LLOYD'S REGISTER OF SHIPPING. STATISTICAL TABLES 1958.

TABLE 1

MERCHANT FLEETS OF THE WORLD

[Not reproduced]

Annex IV

CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION, DONE AT GENEVA ON 6 MARCH 1948

ENTRY INTO FORCE

4 April 1958.

Sir,

I am directed by the Secretary-General to refer to Article 60 of the Convention on the Inter-Governmental Maritime Consultative Organization, done at Geneva, on 6 March 1948, which stipulates that "The present Convention shall enter into force on the date when twenty-one States, of which seven shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become Parties to the Convention in accordance with Article 57".

I have the honour to inform you that the conditions required by the above-mentioned Article 60 having been fulfilled, the Convention came into force on 17 March 1958.

A list of the States which have deposited instruments of acceptance of the Convention is attached hereto for your information. The States which each have a total tonnage of not less than 1,000,000 gross tons of shipping are indicated by an asterisk on the attached list.

The present notification is made in accordance with Article 61 of the Convention.

Accept, Sir, etc.

(Signed) Oscar SCHACHTER,
Director of the General Legal Division,
in charge of the Office of Legal Affairs.

The Secretary of State
Department of State,
Washington 25, D.C.

State	Date of deposit of the instrument of acceptance
*Argentina	18 June 1953
Australia	13 February 1952
Belgium The ratification is valid only for the metropolitan territories; the territories of the Belgian Congo and the Trust Territories of Ruanda-Urundi are expressly excluded.	9 August 1951
Burma	6 July 1951
*Canada	15 October 1948
Dominican Republic	25 August 1953
Ecuador (With a declaration)	12 July 1956
*France	9 April 1952
Haiti	23 June 1953
Honduras	23 August 1954
Iran	2 January 1958
Ireland	26 February 1951
Israel	24 April 1952
*Italy	28 January 1957
*Japan	17 March 1958
Mexico (With a reservation)	21 September 1954
*Netherlands By a notification received on 3 October 1949 notice was given that the participation of the Netherlands in this Convention includes Indonesia, Surinam and the Netherlands West Indies. By a further notification received on 12 July 1951, notice was given that the participation of the Netherlands in this Convention, from 27 December 1949, no longer includes the territories under the jurisdiction of the Republic of Indonesia but includes Surinam, the Netherlands Antilles (formerly the Netherlands West Indies) and Netherlands New Guinea.	31 March 1949
Switzerland (With a reservation)	20 July 1955
United Arab Republic [1]	17 March 1958
*United Kingdom of Great Britain and Northern Ireland	14 February 1949
*United States of America (With a reservation)	17 August 1950

* States which have a total tonnage of not less than 1,000,000 gross tons of shipping.

[1] The United Arab Republic confirmed its acceptance of the Convention on 17 March 1958. Egypt had deposited its instrument of acceptance on 5 April 1954. Syria had informed of its acceptance of the Convention on 12 February 1958 but had not deposited an instrument of acceptance to this effect.

Annex V

10 April 1959.

Dear Mr. Bender,

I wish to acknowledge the receipt of your letter No. UN-956/135 of 3 April 1959, requesting some information concerning the entry into force of the Convention on the Inter-Governmental Maritime Consultative Organization.

In answer, I would like to indicate that the entry into force of the Convention was notified by the Secretary-General to all interested States on 4 April 1958, by circular-letter No. C.N. 59.1958. TREATIES-4, in accordance with Article 61 of the Convention. By 17 March 1958, the conditions required by Article 60 for the coming into force of the Convention had been fulfilled: namely, twenty-one States, of which seven had a total tonnage of not less than 1,000,000 gross tons of shipping had by that date become parties to the Convention, in accordance with its relevant provisions. A list of the States Parties was attached to the notification; the States which were deemed to have a total tonnage of not less than 1,000,000 gross tons of shipping were indicated by an asterisk on the list. The determination of the tonnage was made on the basis of the Lloyd's Register, in consultation with the Chairman of the Preparatory Committee of the Inter-Governmental Maritime Consultative Organization.

In so far as concerns the requirement of Article 60 that seven among the States becoming parties should "each have a total tonnage" of the stated amount, no question was raised, and no consideration was given, as to whether the total tonnage figure of any State then a party, as indicated by Lloyd's Register, should be altered for any reason bearing upon the nature of the ownership of such tonnage.

Sincerely yours,

(Signed) Constantin A. STAVROPOULOS,
Legal Counsel.

Mr. Albert Bender, Jr.
Adviser
United States Mission to the United Nations
2 Park Avenue,
New York 16, N.Y.

5. WRITTEN STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF CHINA

November 17, 1959.

Sir,

I have the honor to acknowledge receipt of the Deputy-Registrar's letter No. 29465 dated April 9, 1959, and your letters No. 30095 dated August 5, 1959, and No. 30118 dated August 13, 1959, in the matter of the Request for an Advisory Opinion of the International Court of Justice concerning the constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, and to submit to the Court the following written statement:

> "In the opinion of the Government of the Republic of China, the Lloyd's Register of Shipping Statistical Tables can be adopted as a basis in designating the eight 'largest ship-owning nations' in accordance with Article 28 *(a)* of the Convention of Inter-Governmental Maritime Consultative Organization. The Government of the Republic of China further considers that all ship-owning nations so designated are nations 'having an important interest in maritime safety', within the meaning of the said Article."

I shall be much obliged if you will lay the above Statement of my Government before the International Court of Justice.

Very truly yours,

(Signed) CHOW SHU-KAI,
Political Vice-Minister.

6. WRITTEN STATEMENT OF THE REPUBLIC OF PANAMA

November 20, 1959.

Introduction

The Republic of Panama has the honor to submit to the International Court of Justice this written statement in the matter of the Advisory Opinion requested of the said Court concerning the election of members of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as IMCO) which election was made by the General Assembly of IMCO on the 15th day of January of 1959.

This Advisory Opinion has been requested by virtue of Resolution adopted by the First Assembly of IMCO on January 19, 1959. (Resolution A.12 (I).) A copy of said Resolution has been transmitted to the Court by the Secretary-General of IMCO, by letter dated March 23, 1959.

The International Court of Justice, by Order of the 5th of August, 1959, has acknowledged that IMCO was established by a Convention annexed to the Final Act of the United Nations Maritime Conference signed at Geneva on March the 6th, 1948; that on November 18, 1948, the General Assembly of the United Nations approved by Resolution 204 (III) a draft Agreement entered into between the Economic and Social Council and the Preparatory Committee of IMCO; that Article IX of the said Agreement provides that IMCO shall be authorized to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities; that the conditions laid down in Article 60 of the Convention under which IMCO was established, relative to the entry into force of said Convention were satisfied on March the 17th, 1958; that on January 13, 1959, the First Assembly of IMCO approved the Agreement on relationship with the United Nations which, pursuant to Article XIX thereof, came into force on that date; that, in accordance with Article 65, paragraph 2, of the Statute of the Court, all documents likely to throw light upon the question on which the advisory opinion of the Court is requested shall accompany the request; and that such documents were filed with the Registry of the Court on July 27, 1959.

The request being, therefore, properly presented to the International Court of Justice, the Court has ordered that written statements may be submitted not later than December 5, 1959 by any State entitled to appear before the Court or by any international organization considered as likely to be able to furnish information on the question submitted to the Court.

The question submitted to the Court is the following:

"Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on the 15th of January, 1959, constituted in accordance with the Convention for the establishment of the Organization?"

I. The Facts

The documents properly filed with the Court in connection with the advisory opinion requested clearly show the following pertinent facts:

1. That the First Assembly of IMCO met in London on January 6 of this year 1959. (IMCO./A./I.INF.1.)

2. That at the Sixth Meeting of the Assembly held on January 13, 1959 (IMCO/A.I./SR.6) the Assembly considered, as item 11 of its agenda, the election of Members of the Maritime Safety Committee; and that, on motion by the United States of America, the consideration of this item was deferred until the next meeting.

3. That the matter of the election of said Members of the Maritime Safety Committee was governed by Article 28 of Convention under which IMCO was established, which Article reads as follows:

"*(a)* The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large number of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

4. That the Assembly did not proceed to elect at one time the fourteen members aforementioned but chose, instead, to consider the election of the first eight members and to elect afterwards the remaining six members. (IMCO/A.I/SR.8.) And that this way of proceeding was the result of a resolution introduced by the representative of the United Kingdom at the Seventh Meeting of the Assembly, held on January 14, 1959 (IMCO/A.I. Working Paper 6) which resolution reads as follows:

"The Assembly,

Desiring to elect the eight members of the Maritime Safety Committee which shall be the largest ship-owning nations,

Having Taken Note of the list prepared by the Secretary-General (doc. IMCO/A.I/Working Paper 5) showing the registered tonnage of each member of the Organization

Resolves

that a separate vote shall be taken for each of the eight places on the Committee; that the Member of the Committee shall be

in the order in which the nations appear in the Secretary-General's list, and therefore those eight nations which first receive a majority of votes in favour shall be declared elected."

5. That the aforementioned list prepared by the Secretary-General (IMCO/A.I/ Working Paper 5) showing the registered tonnage of each Member, reads as follows:

Merchant fleet of the IMCO members according to the Lloyd Register of Shipping Statistical Table 1958

	Countries	*Registered Tons gross*
1	U.S.A.	25,589,596
2	Great Britain and Northern Ireland	20,285,776
3	Liberia	10,078,776
4	Norway	9,384,830
5	Japan	5,465,442
6	Italy	4,899,640
7	Netherlands	4,599,788
8	Panama	4,357,800
9	France	4,337,935
10	Germany	4,077,475
11	Union of Soviet Socialist Republics	2,965,819
12	Greece	1,611,119
13	Canada	1,515,887
14	Argentina	1,028,585
	(India)	(673,678)
15	Australia	631,240
16	Belgium	601,441
17	Turkey	595,625
18	China	539,830
19	Honduras	338,170
20	Israel	205,607
21	Mexico	162,399
22	Irish Republic	136,923
23	Pakistan	128,263
24	Switzerland	97,745
No figures in statistical tables for the following countries:		
25	Burma	
26	Dominican Republic	
27	Ecuador	
28	Haiti	
29	Iran	
30	United Arab Republic	

6. That in arguing in favor of its resolution (mentioned under 4 above) the representative of the United Kingdom of Great Britain and Northern Ireland opened what may be termed as a direct attack against the maritime position of Liberia and Panama IMCO/A.I/SR.7, page. 2). Special attention is given in this statement of the Republic of Panama to the action of the United Kingdom's representative, because the record shows that he was the leader of this attack and comparatively very little appears to have been said by other members who voted with him.

7. That the representative of the United Kingdom, in stating what was the issue before the Assembly, said that "what the Assembly had to do was to choose eight countries which, on the one hand, had an important interest in maritime safety and, on the other hand, were the largest ship-owning nations". (IMCO/A.I/SR.7.) That this position was strongly opposed by the representatives of Liberia and Panama who, as shall be further developed, pointed out that there really was no issue regarding the election of the first eight members since the eight nations having the largest registered tonnage were unquestionably the eight largest ship-owning nations, a position which was taken also by the representative of the United States of America. (IMCO/A.I./SR.7.)

8. That the record shows that the representative of the United Kingdom, in taking the position above mentioned, pretended in effect that he was not questioning the authority of the flag of those two countries in determining the right to eligibility to the Committee as far as the first eight seats were concerned. Nevertheless, the very language used by this representative shows that he was, in fact, questioning the authority of such flags. He stated that "there was clearly no question of dealing with the problem of flags of convenience, which lay outside the limits of the discussion". (IMCO/A.I./SR.7.) However, the United Kingdom's representative, both by language and by action, did question the authority of both the flags of Panama and Liberia and took the lead in perpetrating what Panama considers the violation of the flag of a sovereign nation: and that such action was shared by the majority of the Assembly, although such majority was a very narrow one.

9. That the record shows that, in this connection, the United Kingdom's representative "emphasized that the expression (referring to the "eight largest ship-owning nations") was being used for the first time, but it was perfectly clear. Vessels had really to belong to the countries in question, which was obviously not the case with Panama and Liberia." (IMCO/A.I./SR.7.)

10. That the Lloyd's Register List (quoted under number 5 above) was a list of tonnage registration according to the flag of the respective nation, i.e. a list of ship-owning nations and not a list of "ship-owning individuals or corporations". And, furthermore, that it was this same list which served as the basis for the election

of each of the eight members that were first elected, without any attempt being made to investigate whether the tonnage appearing in said list was actually owned, in whole or in part, by national individuals or corporations of the respective nation in the name of which the tonnage appeared as registered in the Lloyd's Register of Shipping.

11. That at the same Seventh Meeting of the Assembly, held on January 14, the representatives of Liberia and Panama strongly opposed the approval of the United Kingdom's resolution. (IMCO/A.I./SR.7.) The Liberian representative indicated, as the record shows, that "under the terms of Article 28, the Assembly had to elect the eight largest ship-owning nations. But that was not an election in the usual sense of the word, for, once those eight nations had been determined, the Assembly was bound to elect them. Not to accept the list of those eight nations, which was drawn up in application of a valid criterion, and to refuse to elect the countries appearing in the list would constitute a breach of the Convention."

12. That the Liberian representative submitted an amendment to the United Kingdom's resolution which amendment, in effect, reflected the position of Liberia and Panama. (IMCO/A.I./Working Paper 8.)

13. That at this point the representative of the United States offered a conciliatory amendment "to avoid a cleavage between members of IMCO at the very outset of the Organization's existence", which proposal called for the setting up of a provisional Maritime Safety Committee and to postpone the election of the permanent Committee to its Second Session, in 1961. (IMCO/A.I./Working Paper 7.) In supporting his proposal the United States representative spoke against the United Kingdom resolution. He said: "In regard to the election of the fourteen members of the Maritime Safety Committee, Article 28 stipulated that not less than eight of those States should be the 'largest ship-owning nations', and not 'large ship-owning nations'." And he added: "It was therefore unthinkable that those eight States should have to stand as candidates. They should be elected automatically. If the authors of Article 28 had had in mind a free election and if the conditions stipulated in that article had been merely the expression of a wish, it might be assumed that Article 28 would not have been drawn up in compulsive terms." (IMCO/A.I/SR.7.)

14. That after discussion the United States amendment was rejected by the majority, but the meeting adjourned without the election having taken place. (IMCO/A.I./SR.7.)

15. That at the Eighth Meeting held the next day, January 15, 1959, the discussion continued on the Liberian resolution, which had been modified by virtue of a combination of the Liberian proposal with another amendment by the United States, which Liberia

had accepted. This consolidated draft called, in effect, for the automatic election of the eight largest ship-owning nations according to Lloyd's list. The consolidated United States-Liberia proposal was rejected by the majority of the Assembly. (IMCO/A.I/SR.8.)

16. That the United Kingdom's resolution was put to a vote and was approved by the majority. The election of members proceeded, one by one, on the basis of Lloyd's list. The United States of America, first nation in Lloyd's list, was elected. Next, the United Kingdom of Great Britain and Northern Ireland, second nation in Lloyd's list, was elected. Next, the election of Liberia, third nation in Lloyd's list, was put to a vote, and Liberia was declared *not* elected, by the majority. Next, Norway, fourth nation in Lloyd's list, was elected by the majority and through the same procedure, Japan, Italy and the Netherlands were elected. For the election of the seventh member, the election of Panama was put to vote and Panama was declared *not* elected by the majority, although Panama was the eighth nation in Lloyd's list. For the election of the seventh member, the election of France, ninth nation in Lloyd's list, was effected. For the election of the eighth member, the election of the Federal Republic of Germany, tenth nation in Lloyd's list, was put to a vote and was elected by the majority. (IMCO/A.I./SR.8.)

17. That in this manner the election of the first eight members of the Maritime Safety Committee was effected, and that Liberia and Panama strongly protested against the election from the moment Liberia was improperly excluded. Panama and Liberia declared that they considered the election invalid and would seek the submission of the matter to the International Court of Justice. (IMCO/A.I./SR.8.) It should be noted, in passing, that this exclusion of Panama and Liberia was made by a majority of fourteen members which, although a bare majority at the time of the election, was not even at that time a majority of the IMCO membership.

18. That at the Ninth Meeting of the Assembly, held the same day, January 15, 1959, in the afternoon, the Assembly proceeded with the election of the remaining *six* members of the Committee. This election was not a one-by-one election, but by means of nominations made of the various candidates. And, on a joint election, Argentina, Canada, Greece, Pakistan, the Union of Soviet Socialist Republics and the United Arab Republic were elected as the remaining members. (IMCO/A.I./SR.9.)

19. That Liberia and Panama having announced their desire that the matter of the validity of this election be submitted to the International Court of Justice, and the majority of the Assembly being in principle in agreement with such submission, the drafting of the necessary resolution was referred to the Legal Committee; and that, after consideration by said Committee of various drafts of resolutions, joint agreement finally came between the United Kingdom, Panama, and Liberia on a proposal by the representative of Canada

that the question to be submitted to the International Court of Justice should be the following: "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected January 15, 1959, constituted in accordance with the Convention for the establishment of the Organization?" The Legal Committee recommended this drafting of the question to the Assembly and the Assembly approved it by resolution (IMCO /A.12(I)) on January 19, 1959.

20. That this last-mentioned resolution of the Assembly was submitted to the International Court of Justice on March 23, 1959.

II. The Issue

The issue in this case is, purely and simply, the one expressed in the question submitted to this Honorable High Court which question, as aforesaid, is the following:

> "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected January 15, 1959, constituted in accordance with the Convention for the establishment of the Organization?"

III. The Law

The Republic of Panama respectfully asserts that the question submitted to the International Court of Justice for an Advisory Opinion should be answered in the negative, that is to say, that the Maritime Safety Committee was *not* constituted in accordance with the Convention of IMCO.

The Republic of Panama respectfully asks for this reply by the Court because, as the Republic of Panama shall demonstrate hereinafter:

A. The election was conducted in violation of the IMCO Convention and of well-known principles of international law.

B. The election was conducted in a manner that constituted a violation of the sovereignty of the Republic of Panama.

A. A preliminary matter

Before proceeding to demonstrate these assertions, it seems opportune to deal, as a preliminary proposition, with the matter of the proper submission of this question to the International Court of Justice.

Very little needs to be said in this connection, since the IMCO Assembly has expressed its desire to submit this controversy to the Court, which fact indicates no doubt on its part as to propriety of submitting this question to the Court, nor has the Court itself indicated that any such doubt may exist. The Court, by its Order of August 5, 1959, has stated that this question has been submitted

under Article IX of the Agreement entered into between the Economic and Social Council of the United Nations and the Preparatory Committee of IMCO, approved by the General Assembly of the United Nations, which Article IX provides "that IMCO shall be authorized to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities". The matter of the alleged violation of the IMCO Convention in the election of one of its most important organs is, undoubtedly, a "legal question arising within the scope of its activities". Article 56 of the IMCO Convention further corroborates that all questions of this nature "shall be submitted by the Organization to the International Court of Justice for an advisory opinion, in accordance with Article 96 of the Charter of the United Nations".

It may be well to add that the International Court of Justice has had occasion to indicate, as the principal judicial organ of the United Nations, that the interpretation of a multilateral treaty is a function which falls within the normal exercise of its judicial powers. *Conditions of Admission of a State to Membership in the United Nations,* (Article 4 of the Charter), *I.C.J. Reports 1947-1948,* p. 61; *Competence of the General Assembly for the Admission of a State to the United Nations, I.C.J. Reports 1950,* p. 6. The same view was held by the Permanent Court of International Justice in *Designation of the Workers' Delegate for the Netherlands of the Third Session of the International Labour Conference.* P.C.I.J., Series B, No. 1; *Free City of Danzig and International Labour Organisation,* P.C.I.J., Series B, No. 18.

B. Violation of IMCO Convention and of principles of international law

1. *Violation of Article 28 (a) of the IMCO Convention*

Which was the guiding rule that the Assembly was bound to follow in electing the first eight members of the Maritime Safety Committee?

This guiding rule was a very simple one. It was contained in Article 28, paragraph *(a)* of the IMCO Convention, which is quoted hereinbefore in the statement of "The Facts" (number 3). This provision indicates in very plain language that "the Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, *of which not less than eight shall be the largest ship-owning nations...*". Special attention is called to the mandatory tense of the verb *"shall"*. This is an imperative provision. No room is left for freedom or discretion in selecting these first eight members. The eight largest ship-owning nations automatically had to be elected. This the Assembly was bound to do and it failed to do.

It is important to note that as regards the election of the remaining *six* members, the language of Article 28 is flexible, it makes allowance for discretion and for the appreciation of certain factors which are not susceptible of determination on an exact basis and which, therefore, would justify the process of judgment and discretion. Such language reads:

> "... and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large number of crews or in the carriage of large number of berthed or unberthed passengers, and of major geographical areas".

The difference in language between the first portion and the second portion of Article 28 *(a)* is most significant and should have been conclusive to the Assembly. As to the first eight members, no discretion was allowed; as to the remaining six, discretion and judgement were contemplated. When the majority of the Assembly arrogated to itself the faculty of deciding on the basis of criteria not provided in the Convention, if and to what extent any of the eight largest ship-owning nations had an important interest in maritime safety, the Assembly was exercising discretion in a field where discretion had been excluded. The fact of belonging to the eight largest ship-owning nations was, by the language of Article 28 *(a)*, considered as a final and conclusive determination of the existence of "an important interest in maritime safety". That is the reason why no further explanation or detail and no indication of criteria for determining "interest in maritime safety" is given as to the first eight members. Ship-owning is the sole criterion. However, as regards the remaining *six* members, the existence of an "important interest in maritime safety" is defined by the words "such as nations interested in the supply of large number of crews or in the carriage of large number of berthed or unberthed passengers, and of major geographical areas".

As the representatives of Liberia, Panama and the United States so well pointed out, the election of the *eight* largest ship-owning nations should have been an automatic election, while the election of the remaining *six* members called for a judicious estimate of the various factors or criteria indicated by Article 28 *(a)* as being determinative of an "important interest in maritime safety". As the United States representative explained at the meeting, "it was unthinkable that those eight States should have to stand as candidates. They should be elected automatically. If the authors of Article 28 had had in mind a free election and if the conditions stipulated in that article had been merely the expression of a wish, it might be assumed that Article 28 would not have been drawn in compulsive terms."

And to this we add that if, as the United Kingdom and the majority of the Assembly contended, the fact of being one of the

eight largest ship-owning nations was not conclusive of an interest in maritime safety, and such interest had to be estimated separately and independently of such largest ship-owning, then Article 28, to be consistent in both its first and second parts, would have indicated that the determination of such interest in maritime safety, as far as the first *eight* members were concerned, would depend upon a specially defined criteria, as it was done with regard to the election of the remaining *six* members. But Article 28 did not provide such specific criteria for the first eight members for the very reason already stated, namely, that being the eight largest ship-owning nations and being a member of IMCO was in itself conclusive as to the existence of an important interest in maritime safety.

The Republic of Panama submits that when the Assembly undertook, as it did, to deny to two of the nations which the Assembly itself had admitted were among the eight largest ship-owning nations, the membership in the Committee to which they were entitled, and when the Assembly, in making such denial, undertook to interpolate, so to speak, into Article 28 *(a)* certain criteria regarding the first *eight* members, such as actual ownership of the vessels, or the nationality of experts, etc., which criteria did not appear in the said article but had been, on the contrary, excluded from said article, the Assembly violated Article 28 in failing to observe a mandatory provision thereof and making an election which was contrary to such mandate.

The fact that IMCO may be considered as a political body did not excuse the Assembly from its obligation to obey the very Convention under which it had been created and under which it had to proceed in effecting this election. In the Advisory Opinion rendered by the International Court of Justice on May 28, 1948 *(Conditions of Admission of a State to Membership in the United Nations*—Article 4 of the Charter, *I.C.J. Reports 1947-1948)* the Court held:

> "The political character of an organ cannot release it from the observance of treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution..."

We submit that there is a marked analogy between the issue confronted by the Court in the case just cited and that of the present case. The question in the former case was whether, in deciding as to the admission of a nation to membership in the United Nations, a State could make its vote for admission dependent upon conditions not appearing in the United Nations Charter.

2. *Contravention of principles of treaty construction*

a. When the language is clear, it must be applied according to its natural meaning

The Republic of Panama submits that the Assembly being, as it was, bound by the terms of the IMCO Convention, and having

before it a clear provision, namely, Article 28 *(a)*, indicating to it the way to proceed, had no other choice but to proceed with the application of the rule binding upon it. And that, in order to do so, the Assembly, being subservient to law, was obligated to follow the two well-known rules of treaty and statutory interpretation and application which may be stated as follows:

(1) When the text of a treaty or statute is clear, unambiguous and unequivocal, such text must be followed according to its natural and usual meaning, and without it being necessary to examine the treaty or statute in its entirety, or to examine other extrinsic material connected with it, for the purpose of ascertaining the spirit or the intent of the particular provision involved: and

(2) If the language of a particular statutory or treaty provision is not clear, or is ambiguous or equivocal, it becomes necessary to consider the treaty or statute in its entirety, as well as other extrinsic material connected with it, to ascertain the spirit or the intent of the particular provision involved.

The Republic of Panama submits that the Assembly of IMCO, in proceeding with the election in question, failed to observe both of the above-mentioned rules because (1) it failed to observe the plain and natural meaning of a clear, unambiguous and unequivocal treaty provision, and (2) even if it were to be deduced, from the action of the Assembly, that it thought that the provision involved was not clear, or that it was ambiguous or equivocal, the Assembly failed to go into the consideration of the Convention as a whole, or into considering other material connected with it, which would have thrown light as to the spirit or intent of the provision involved.

The Republic of Panama submits that the Assembly was faced with the first of the two cases contemplated above, i.e. with a treaty provision which was clear, unambiguous and unequivocal. And it further submits that even if it were assumed, for the sake of argument, that the provision was not clear or that it was ambiguous or equivocal, the examination of the Convention in its entirety, as well as that of extrinsic material connected with it, clearly shows that the spirit or intent of the provision involved was and is that the election of the Maritime Safety Committee should have been conducted and effectuated with the inclusion of Panama and Liberia as members thereof, these two nations being among the eight largest ship-owning nations, and not, as the Assembly did, with the exclusion of these two nations from a membership legally belonging to them.

The above two rules of treaty and statutory construction are so well-known as to be almost elementary. It would seem, therefore, unnecessary to substantiate them by the citation of pertinent

authorities. But in view of the seriousness of the action taken by the Assembly and the gravity of the breach committed against Panama and Liberia, the Republic of Panama proceeds, at the risk of dwelling upon the obvious, to cite pertinent authorities regarding such rules.

In the Advisory Opinion rendered by the Permanent Court of International Justice on September 15, 1923 (*Acquisition of Polish Nationality*, P.C.I.J. Series B, No. 7, p. 20) the question before the Court was that of the interpretation of Article 4 of the Polish Minorities Treaty under which Poland admitted and declared "to be Polish nationals *ipso facto* and without the requirement of any formality persons who were born in the said territory of *parents habitually resident there* [underscoring ours], even if at the date of the coming into force of the present treaty they are not themselves habitually resident there". Poland contended that the habitual residence of the parents had to continue or be re-established at the time the treaty came into force. The Court denied Poland's contention. The Court stated:

> "The Minorities Treaty (Article 4, par. 1) admits and declares to be Polish nationals, *ipso facto*, persons who were born in the territory of the new State of parents habitually resident there'. These words refer to residence of, the parents at the time of the birth of the child and at this time only."

And the Court added:

> "The Court's task is clearly defined. Having before it a clause which leaves little to be desired in the nature of clearness, it is bound to apply this Clause as it stands, without considering whether other provisions might with advantage have been added to or substituted for it. To impose an additional condition not provided for in the Treaty of June 28th, 1919, would be equivalent not to interpreting the Treaty, but to reconstructing it."

In the matter, cited *ut supra*, of the Advisory Opinion rendered by the International Court of Justice regarding the interpretation of Article 4 of the Charter of the United Nations (*I.C.J. Reports 1947-1948*, page 63), the Court said:

> "To warrant an interpretation other than that which ensues from the natural meaning of words, a decisive reason would be required which has not been established."

As aforestated there is a marked analogy between this case and the one now before the Court. The question involved was whether a State, in voting for the admission of a member to the United Nations, could make its vote dependent upon conditions not stipulated in the Charter, a contention which the Court disavowed. Similarly, the Assembly had no right to deny to Panama and Liberia the committee membership to which they were entitled by means of imposing conditions for establishing an interest in maritime safety other than

the only condition, of being one of the largest ship-owning nations, which the convention contemplated.

In the matter of the Advisory Opinion rendered by the Permanent Court of International Justice regarding *Polish Postal Service in Danzig*, P.C.I.J. Series B, No. 11, page 39, the question involved was the interpretation of Article 168, No. 1, of the Warsaw Agreement regarding postal rights as between Poland and Danzig. Poland contended that Danzig was obligated to complete the necessary postal arrangements, while Danzig contended that the stipulations involved only indicated a programme for negotiation. The Court stated:

> "It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd."

The Republic of Panama submits that the application of the principle of statutory or treaty construction above cited should have compelled the Assembly to apply the language of Article 28 *(a)* in its natural meaning; that the language was so clear that, to quote the Permanent Court of International Justice in the *Polish Nationality* case aforementioned, the imposition of an additional condition, as the majority of the Assembly did impose, regarding the election of Panama and Liberia, not provided in the treaty, was "*equivalent not to interpreting the treaty, but to reconstructing it*".

It is opportune to note, in this connection, that the majority of the Assembly, in denying to Panama and Liberia their rightful seats in the Committee, proceeded not only on the basis, utterly improper, of imposing unwarranted criteria for the determination of the existence of an important interest in maritime safety as to the first eight members, but the Assembly also proceeded on the unwarranted and wrongful criterion that the determination of what constituted a "ship-owning nation" could be made by means other than the recognition of the flag which the vessels were flying, such as considering the nationality of the private owners of said vessels, or the nationality of the experts or expert organizations rendering services to such nations. The record shows that such improper, unwarranted and mistaken criteria served as the basis for the action of the majority of the Assembly. Although the majority members did not explain their votes, the proceedings make it apparent that they were swayed by the improperly motivated criteria of the leading sponsors of this attack against Panama and Liberia, namely the United Kingdom and the Norwegian representatives. Thus, we find as stated under number 9 ("The Facts") above, that the United Kingdom's representative stated that "vessels had really to belong to the countries in question, which was obviously not the case with Panama and Liberia", a position which he reiterated the day of the election (IMCO/A.I/SR 8., p. 3) when he stated that "for reasons

he had given at the previous meeting he would oppose the amendments (Liberia's) the effect of which would be to acknowledge Liberia and Panama as being among the eight largest ship-owning nations".

It should have been so clear to the Assembly as not even to warrant discussion that the only natural, reasonable way of establishing the rank of a "ship-owning nation" was by reference to the tonnage registered under the flag of such nation, and without reference to the private ownership of the vessel, to the nationality of its crew or maritime experts, or to any other like criterion. When the Assembly majority failed to determine the proper rank among ship-owning nations on the basis of such registered tonnage, and entered into such considerations as the private ownership of vessels, the nationality of experts, etc., the Assembly majority failed to give to the words "eight largest ship-owning nations", appearing in the Treaty, their natural and usual meaning, in violation of the legal principle above cited. This breach on the part of the Assembly of IMCO became more patent when the very resolution serving as the rule for the election, and introduced by the United Kingdom's representative, had adopted as the basis for the ranking of nations Lloyd's list, in which tonnage is registered according to the flag of the vessels and without regard or even mention as to private ownership. And it was on the basis of such list, only showing tonnage registration according to flag, that the *eight* members were elected, but not in the order in which they appeared on such list, but by electing the ninth and the tenth ranking nations to the seats belonging to the third and the eighth nations in the said list.

i. *Natural meaning as resulting from maritime usage*

That "the eight largest ship-owning nations" could only mean the eight nations having the largest tonnage registered under their flag, should have been an apparent, an obvious proposition to the Assembly. We say this because international maritime usage has it well-established that the ranking of ship-owning nations is always given in terms of tonnage registered under a nation's flag. And, we repeat, the very list of Lloyd's, foremost authority used by the Assembly as the basis for the voting, showed such ranking order on the basis of tonnage under flag registration. Lloyd's is, without question, the standard reference throughout the world on the subject. And we see that in the Lloyd's Register of Shipping (see Annex I), wherein the maritime nations of the world are listed, such listing appears in the order of tonnage registered under the flag, and the expression "Countries Where Owned" is used to refer to the nation under whose flag the tonnage is registered.

In other words, whenever, in the maritime world, the expression "ship-owning nation" or "vessels belonging to a particular nation" or a similar expression is used, it is well understood that the reference is not to ownership in the civil sense, that is, of the State

actually having title or holding the fee simple over the property. The expression refers to ownership in the political sense, that is, of the State of the flag the vessel flies being the one entitled to impose its laws and regulations on said vessel, under international law, and to exercise exclusive jurisdiction over said vessel on the high seas and even, to a great extent, while the vessel is within the territorial waters of another State, as we shall hereinafter demonstrate.

And such is the practice and the permanent usage in the maritime world, particularly in dealing with safety matters, because the maritime world has no reason to be interested in private ownership, which is of no legal consequence as far as the authority to impose safety laws and regulations is concerned, but only in the political authority and the jurisdictional power of the State of the flag to enact and make effective such laws and regulations over the said vessels. To the Assembly of IMCO, supposed to have been primarily interested in the effectiveness of safety measures, this interest in dealing with States and not with private owners should have been more apparent and not one to be ignored so lightly and capriciously.

ii. *Natural meaning as resulting from treaties*

Not only usage and constant practice had established the aforementioned criterion as to "ship-owning nations", but specific treaty provisions, which the Assembly was bound to respect, so indicated. Thus, we find that in the Safety of Life at Sea Convention, signed in 1929 and also on June 10, 1948, of which the IMCO Members are parties, and which is one of the vital instruments governing the purposes and objectives of IMCO and of the Maritime Safety Committee, it is provided, by Article II, that "the ships to which the present Convention applies are ships registered in countries the Governments of which are Contracting Governments". And in the Load Line Convention signed in London on July 5, 1930, which is of similarly vital importance with regard to IMCO's functions and objectives, it is provided by Article 3 *(a)*:

> "a ship is regarded as belonging to a country if it is registered by the Government of that country".

That "ship-owning nations" means by general usage and practice nations under whose flag the tonnage is registered is also shown by the decision of the International Court of Justice in the *Corfu Channel Case* (*I.C.J. Reports 1949*, pp. 28, 29) where the Court, in considering the passage of ships through the Channel, stated:

> "During the period of one year nine months, the total number of ships was 2,884. *The flags of the ships are Greek, Italian, Roumanian, Yugoslav, French, Albanian and British.*"

And the record of the proceedings of the United Nations Maritime Conference of February 19—March 6, 1948, held at Geneva,

wherein the IMCO Convention was signed, clearly indicates that the maritime nations were interested in Governments as political entities having authority over ships under their flag, and not in the private ownership of vessels. Nowhere in the proceedings is any mention made of private ownership, individual nationality of experts, or other similarly irrelevant matters.

As a matter of fact, the proceedings of the United Maritime Conference of 1948, under which IMCO originated, show that, pursuant to a proposal by the United States of America, which was supported by the United Kingdom, it was decided to establish, in addition to the Main Working Party, a Second Working Party to consider matters affecting maritime safety. (E/CONF.4/27.) Panama was elected to the above Maritime Safety Working Party (E/CONF. 4/SR/8) after a strong protest made by the Panamanian Delegate who threatened to withdraw from the Conference. The Panamanian Delegate emphasized that Panama ranked fifth *in terms of tonnage*, and was situated at a meeting point of world shipping lines, and had a long-standing interest in international trade, and that, if Panama was not added to the countries listed in such Party, it had no part to play at the Conference (E/CONF./4/SR.Revised, p. 59). If Panama was eligible for the Maritime Safety Working Party in 1948, and still in 1959 it ranked among the eight largest ship-owning nations, why was it not eligible in 1959 to membership in the Maritime Safety Committee?

iii. *Absurdity of criterion used by the majority of the IMCO Assembly*

The IMCO Assembly was bound to follow the law of the flag in determining the ranking of the first "eight largest ship-owning nations", not only because such was the clear meaning of Article 28 *(a)*, under which the election was being held and because such was the well-settled practice and usage and the governing rule of treaty law and of international jurisprudence, but also because to adopt a different criterion for establishing a "ship-owning nation" was conducive to an unreasonable and absurd result, as it has, in fact, occurred.

The absurdity of choosing a different criterion than that of flag registration was very well brought out in the discussion by the representative of the United States (IMCO/A.I./SR.7). He explained very clearly that, if the right criterion of tonnage registration under the flag was not adopted, the other three possible criteria were the following: the place of residence of the owning company, the place of ownership of the shareholders who were beneficiaries of the ownership, or the actual ownership by the State (that is, ownership in the civil sense of being title-holder to the ship). The United States representative said:

> "The criterion of the place of residence of the owning company must be ruled out, since it was the State whose flag the vessel flew

> that was directly concerned in its safety, much more than the State in which the company happened to be legally constituted. As to the criterion of the place of residence of the shareholders, that also would have to be ruled out on account of the difficulty in establishing the ownership of joint stock companies and because, moreover, that interpretation was incompatible with the principles of Company Law. Nor was ownership by the State (he referred to actual ownership, in the civil sense) a valid criterion since it would result in ruling out countries like the United Kingdom, which was inconceivable." (IMCO/A.I./SR.7.)

But not only was it absurd and unreasonable to choose any of the three criteria mentioned. It also resulted in a rule of impossible application and one that would serve to create confusion and divided authority in a field where unity and close cooperation is highly desirable. Dealing, as the Assembly was, with the constitution of an organ charged with serious responsabilities with regards to maritime safety, the Assembly must have been keenly interested in seeing that the largest representation was given to nations which, by virtue of flag registration, were able to enact and apply the necessary safety laws and regulations upon their vessels. Otherwise, whenever the nationality of the private owner of the vessel was different from that of the vessel's flag, the membership of the Committee would, according to the view of the majority of the Assembly, be designated according to the nationality of the owner. And the result would be that with regard to the same vessel, there would be one State having attained membership in the Committee with no authority to act upon the ship and another State with such power to act, but without membership in the Committee. No more absurd a situation can be foreseen. And if we consider that, as is common in today's commercial and financial world, the beneficial ownership of a ship is sometimes represented by bearer shares, or is in the hands of trustees of various nationalities and subject to mortgages also belonging to nationals of various countries, and some of them frequently unknown, how far are we to go in investigating beneficial ownership? Where will the line of demarcation be drawn?... How far and how often could the legal wrong of "piercing the corporate veil" be perpetrated?... And when, after all, such beneficial ownership could not be satisfactorily established, how would the seat in the Committee be assigned?... This serves to show that by, departing from the orthodox criterion, as the Assembly majority did, it was establishing an absurd rule and one of impossible application.

In the case of *Polish Postal Service in Danzig* (cited *supra*) the Permanent Court of International Justice said: "It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd." What the majority of the Assembly did in this case was to reject

the normal sense of the words in their context and to adopt the interpretation "leading to something unreasonable and absurd". It seems pertinent, in this connection, to cite the words of the Permanent Court of International Justice in its Advisory Opinion No. 16 (*Interpretation of the Greco-Turkish Agreement of December 1st, 1926*, P.C.I.J. Series B, p. 16) where the Court said:

> "It follows that any interpretation or measure capable of impeding the work of the Commission in this domain must be regarded as contrary to the spirit of the clauses providing for the creation of this body."

But more can be said regarding the absurdity of the criterion followed by the majority of the Assembly. We can say that it is precisely due to the factor already mentioned, i.e. the fact that the State whose flag the ship flies is the one invested with authority to enact laws and regulations and to exercise jurisdiction over the vessel—that the largest representation was accorded by the Convention on the basis of flag registration, while a smaller number of seats were accorded by reason of other factors, such as nationality of crews, furnishing of passengers, etc. There is a perfect and simple logic in this distribution. The Organization must give the greatest opportunity and ability to act to those nations having the authority to act over the largest number of vessels. Thus, we can conceive of a State possessing the largest number of seamen, or the largest number of experts, or furnishing the largest number of passengers, and yet such a State, although having undoubtedly an important interest in maritime safety, could do very little to enact and enforce the necessary safety rules or regulations over ships which do not fly its flag. This explains why the proportion of *eight* to *six* in the distribution of membership in the Committee was established by Article 28.

iv. *Natural meaning as resulting from fundamental principles of international law*

The principle that only the State whose flag the ship flies is the one vested with the proper power, authority and jurisdiction over the vessel is a well-settled and fundamental principle of international law.

The leading international decision on the subject is, undoubtedly, *The Case of the S.S. Lotus* (P.C.I.J., Series A, No. 10). The case arose as a consequence of the collision between the S.S. *Lotus*, flying the French flag, and the S.S. *Boz-Kourt*, flying the Turkish flag. The collision arose on the high seas. Turkey instituted criminal proceedings in a Turkish court against the watch officer on the "Lotus", a French citizen. The question was whether the Turkish or the French penal codes were applicable to the collision or whether criminal jurisdiction was concurrent. The Court, in deciding what virtually amounted to a recognition of concurrent jurisdiction in

case of collision on the high seas, went at great length in studying the matter of jurisdiction over a vessel by the State whose flag the vessel flies. The Court said:

> "It is certainly true that—apart from certain special cases which are defined by international law—vessels on the high seas are subject to no authority except that of the State whose flag they fly."

For the purposes of the present IMCO case, it is of practically no importance that the opinions of the Judges in the *Lotus* case were divided, as they were all in agreement on the proposition for which this case is now cited, that is, the jurisdiction and authority of the State over a vessel flying its flag. (The division was only as to the concurrence or degree of concurrence of such jurisdiction in cases of collision on the high seas.) Therefore, it is in point to quote from the dissenting opinion of Judge Loder the following:

> "A merchant ship being a complete entity, organized and subject to discipline in conformity with the laws and subject to the control of the State whose flag it flies, and having regard to the absence of all territorial sovereignty upon the high seas, it is only natural that as far as concerns criminal law this entity should come under the jurisdiction of the State."

Judge Weiss stated:

> "These vessels and their crews *are answerable only to the law of the flag* (underscoring ours), a situation which is often described by saying, with more or less accuracy, that these vessels constitute a detached and floating portion of the national territory. The effect of this is to exclude, just as much as on the national territory itself, and apart from certain exceptional cases, the exercise of any jurisdiction other than that of the flag, and in particular that of a foreign port, at which a vessel may touch after the commission of some offense on the high seas."

Judge Moore, concurring with the majority, stated that "it is universally admitted that a ship on the high seas is, for jurisdictional purposes, to be considered as a part of the territory of the the country to which it belongs".

We repeat that the entire Court concurred on the recognition, as a principle of international law, of the jurisdiction of the law of flag regarding acts done on board the ship.

In another international decision, the *Muscat Dhows Case* Award, August 8, 1905, Scott, *Hague Court Reports*, pp. 95, 96, a tribunal of the Permanent Court of Arbitration, acting under a *compromis* between France and Great Britain to decide difficulties arisen with regard to the scope of a declaration of France and Great Britain "to engage reciprocally to respect the independence of His Highness the Sultan of Muscat", had occasion to emphasize the law of the flag, stating that "generally speaking *it belongs to every sovereign nation to decide to whom it will accord the right to fly his flag and to prescribe the rules governing such grants...*".

We should perhaps refrain from citing decisions rendered by State courts in recognition of this principle of international law and limit our citations to international decisions. However, the attack against Panama and Liberia having been led by the United Kingdom's representative, we cannot refrain from citing judicial authority from his own country. Thus, in *Regina* vs. *Leslie*, Great Britain, Court of Appeals (1860), 8 *Cox's Criminal Cases*, p. 269, the Court of Appeals sustained the conviction for false imprisonment against the master of a British ship. The ship, while lying in Chile, undertook to take the prosecutor and others under contract to England, against their will, as they were being deported, the prosecutor and the others being Chilean nationals. The Court ruled that the action may not have been wrongful while the ship was within Chilean waters, but that it became unlawful once the ship was on the high seas. The Court stated:

> "It is clear that an English ship on the high seas, out of any foreign territory, is subject to the laws of England, and persons, whether foreign or English, on board such ship are as much amenable to English law as they would be on English soil."

It is well known that the jurisdiction of the State of the flag over the vessel flying such flag is so firmly established that it is not only applicable to the high seas, but it also extends, although not in the same degree, while the vessel is lying at a foreign port. The authorities are reviewed in *Wildenhus' Case*, United States Supreme Court, 1887, 120 U.S. 1. Wildenhus, a Belgian member of the crew of the Belgian steamer "Noorland", was charged with inflicting a mortal wound on a Belgian member of the crew, while the vessel was moored at a dock in Jersey City. The affray occurred in the presence of other members of the crew. The Belgian Consul for New York and New Jersey requested the surrender of the prisoner from a Jersey City jail on the ground that he was triable under Belgian law. A writ of *habeas corpus* was denied the Consul, which decision the Supreme Court of the United States affirmed. The Supreme Court stated:

> "The principle which governs the whole matter is this: Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished by the proper authorities of the local jurisdiction."

Practically all of the well-known authorities on international law have uniformly recognized, as a firm principle of international law, the principle of the so-called "law of the flag", which the IMCO Assembly majority violated by its action now under judicial scrutiny. The present statement of the Republic of Panama would become unduly long if an exhaustive citation of such authorities is

even attempted. We shall, therefore, cite only some of the foremost text-writers.

Henry Wheaton, in his "*Elements of International Law*", published as one of "The Classics of International Law" (No 19) in James Brown Scott's *Publications of the Carnegie Endowment for International Peace,* page 142 (169), sec. 106, states:

> "Both the public and private vessels of every nation, on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the State to which they belong."

In Oppenheim's *International Law*, Vol. I, *Peace* (Seventh Edition, 1948), it is stated:

> "§ 260. Jurisdiction on the open sea is in the main connected with the maritime flag under which a vessel sails. This is the consequence of the fact, stated above, that a certain legal order is created on the open sea through the cooperation of rules of the Law of Nations with rules of the Municipal Laws of such States as possess a maritime flag."

And at section 261 it is stated:

> "In the interest of order on the open sea, a vessel not sailing under the maritime flag of a State enjoys no protection whatever, for the freedom of navigation on the open sea is freedom for such vessels only as sail under the flag of a State. *But a State is absolutely independent in framing the rules concerning the claim of vessels to its flag. It can in particular authorize such vessels to sail under its flag as are the property of foreign subjects; but such foreign vessels sailing under its flag fall thereby under its jurisdiction.*" (Underscoring ours.)

In Green Haywood Hackworth's *Digest of International Law* (1941), Vol. II, Chapter VI, a quotation is made from the reply from the Counselor for the Department of State of the United States to an inquiry by the British Ambassador made on March 23, 1914. The pertinent part of the reply reads as follows:

> "Private vessels belonging to this country are deemed parts of its territory. They are accordingly regarded as subject to the jurisdiction of this country, on the high seas, and in foreign ports, even though they admittedly are also temporarily subject generally to the laws of such ports."

Carlos Calvo in *Derecho Internacional Teorico y Practico de Europa y America*, ed. 1868, page 306, sec. 197, states:

> "Los buques de guerra y mercantes en alta mar están sujetos siempre que no se encuentren dentro de los límites jurisdiccionales de otra nación, a la del Estado a que pertenecen. Vattel dice que los buques de una nación cuando navegan sobre un mar libre, son como porciones o pedazos de su mismo territorio."

Daniel Antokoletz in his *Tratado de Derecho Internacional Público*, ed. 1944, Tomo III, page 22, states:

"En el oceano no existe diferencia entre los buques de guerra y los buques mercantes en cuanto a jurisdicción y competencia. Todos los actos de orden civil, comercial, o administrativos, y todos los delitos o actos de indisciplina que se cometan a bordo de un buque en alta mar, se rigen por las leyes y están sometidos a la jurisdicción del Estado cuyo pabellón enarbola el buque."

In his *Manual de Derecho Internacional Público* (ed. 1947, Buenos Aires, page 147) Dr. L. A. Podesta Costa states:

"Todo buque, tanto público como privado, está sometido en principio a la jurisdicción del Estado de su bandera. Esto significa que el buque mismo, así como las personas y las cosas a su bordo, están regidos, en principio, por las leyes del pabellón y sometidos a su aplicación por las autoridades competentes de ese Estado; y significa también que el Estado del pabellón protege al buque y puede ser responsabilizado en ciertos casos por los hechos ilícitos que el buque cometa."

Dr. Antonio Sanchez de Bustamante y Sirven, in *Manual de Derecho Internacional Público*, 4a. ed., 1947, La Habana, page 318, states:

"El buque sigue siendo, en aguas extranjeras, lo mismo cuando es público que cuando es privado, una parte del territorio del país cuya nacionalidad tiene y que continúa ejerciendo sobre él un derecho no intermitente de propiedad soberana. No se trata de una metáfora engañosa, sino de una realidad jurídica."

We have demonstrated above that the usual and natural meaning of the expression "eight largest ship-owning nations" is "the eight nations with the largest tonnage registered under their flag"; that such usual and natural meaning resulted from usage and practice as well as from treaty law and international jurisprudence; that the majority of the IMCO Assembly failed to observe such usual and natural meaning, and, instead, chose an interpretation which was unreasonable and absurd, thus violating well-settled legal rules of statutory and treaty construction.

b. When the language is ambiguous, the intent must be ascertained

Let us now go back to the two rules of statutory or treaty construction enunciated by us before. We stated as the first rule that when the text of a treaty or statute is clear, unambiguous or unequivocal, such text must be followed according to its natural and usual meaning, and without it being necessary to examine the treaty or statute in its entirety, or other extrinsic material connected with it, for the purpose of ascertaining the spirit or the intent of the particular provision involved. We have shown that in the present case the Assembly of IMCO was faced with language which was clear, unambiguous and unequivocal and, nevertheless, the Assembly saw fit to disregard such language.

We now undertake to show that the majority of the IMCO Assembly exhibited, also, a total disregard of the second well-known rule of statutory construction, which has been enunciated as follows:

> "(2) If the language of a particular treaty or statutory provision is not clear, or is ambiguous or equivocal, it becomes necessary to consider the treaty or statute in its entirety, as well as other extrinsic material connected with it to ascertain the spirit or the intent of the particular provision involved."

We have stated, in this connection, that if it were to be deduced, *from the action of the Assembly majority, that it thought that the* provision involved was not clear, or was ambiguous or equivocal, the Assembly failed to go into the consideration of the Convention as a whole, or into considering other material connected with it which would have thrown light as to the spirit or intent of the provision involved.

This assertion is substantiated by the record of the proceedings of the IMCO 1959 Assembly which are before the Court. In the scant debate held on the subject no mention or citation was made by any of the speakers arguing against Liberia and Panama which would indicate, even remotely, that the majority was trying to find the intent or spirit of the provision involved. One cannot but be left with the clear impression, in reading this extraordinarily concise statement of opposition to the rights of Liberia and Panama, that this bare majority of the so-called traditional maritime nations had a predetermined decision to exclude Liberia and Panama and was not particularly interested in listening to any meritorious reasons which might have swayed them from such prejudiced position.

And we say this because it seems obvious, uncontroversial, that such an examination of the convention as a whole and of the other material referred to, would necessarily have resulted in the majority voting in favor of Liberia and Panama, if an unbiased vote was being cast.

Let us examine this aspect of the case.

In considering the matter of the *Competence of the International Labour Organisation regarding international regulation of the conditions of labour of persons employed in agriculture,* the Permanent Court of International Justice stated (P.C.I.J., Series B., No. 2, p. 23):

> "In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense."

In applying this rule of construction to the present case, the Assembly should have given special consideration to Article 1,

Article 3, Article 12, Article 16, Article 29, Article 30, Article 41, Article 42 and Article 60 of the Convention. All these articles throw considerable light as to the meaning of the Convention with respect to the composition of the Maritime Safety Committee.

Article 1 sets forth the purposes of the Organization. Subsection *(a)* sets forth as the main purpose "to provide machinery for cooperation among Governments in the field of governmental regulation and practice relating to technical matters of all kinds ... *and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation*". (Underscoring ours.) It is obvious that this purpose could only be properly achieved by giving the highest participation in the Maritime Safety Committee to the largest ship-owning nations on the basis of the flag under which tonnage was registered, inasmuch as the law of the flag, as it has been previously established, is the one that governs and determines the source of legal authority and power to make effective such "general adoption of the highest practicable standards".

Subsection *(b)* of the same Article 1 indicates, as another important purpose, "to encourage the removal of discriminatory action and unnecessary restrictions affecting shipping engaged in international trade". By the same token, only the Governments under whose flag the largest tonnage registration existed, have the legal power and authority to remove such "discriminatory action and unnecessary restrictions" as to the largest tonnage in trade. And it seems opportune to ask: How can it be intelligently expected that two of the largest ship-owning nations, representing approximately 16,000,000 tons of shipping, should feel enthusiastic as to adopting rules for the removal of such "discrimination" and "unnecessary restrictions", when those two nations, by the arbitrary action of the majority, are being made the victims of "discrimination" and of the imposition of "unnecessary restrictions" as to their qualification for membership in the Maritime Safety Committee?

Article 3 specifies the functions of the Organization for the purpose of achieving the objectives previously mentioned. It indicates the important matters as to which the Organization would make recommendations *(a)*. It provides for the drafting of conventions, agreements, etc. *(b)*. It provides for the setting up of a machinery for consultation among Members Governments *(c)*.

Article 12 designates the organs of the Organization, of which the Maritime Safety Committee is a principal organ.

These two articles clearly show the importance of the Maritime Safety Committee and, we repeat, it should have been obvious to the Assembly that only by according the largest representation in that Committee to the ship-owning nations on the basis of the law of the flag, could it be expected that such Committee should perform its most important functions.

Article 16 indicates the functions of the Assembly. Paragraph *(f)* deserves special mention. It authorizes the Assembly "to vote the budget and determine the financial arrangements of the Organization". Since the budget is to be determined mainly on the basis of tonnage registration under the flag (as indicated by the Resolution of the Assembly under Articles 41 and 42, hereinafter mentioned), simple logic indicates that a corresponding voting power in important Committees, such as the Maritime Safety Committee, should also be based on flag registration of tonnage.

Paragraph *(i)* provides for recommendation to Members to adopt regulations concerning maritime safety. We say, again, that the law of the flag is the only proper one to ensure the effective adoption of such regulations, and, consequently, the propriety of such recommendations.

Article 29 provides that the Maritime Safety Committee shall have the duty of considering matters concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, etc. (paragraph *(a)*). Paragraph *(b)* stipulates that the Maritime Safety Committee "shall provide machinery for performing any duties assigned to it by the Convention or by the Assembly". Paragraph *(c)* provides that the Committee shall have the duty of maintaining close relations with other intergovernmental bodies. Again, only those Governments having the proper authority and jurisdiction, by reason of the law of the flag, over the largest registered tonnage, could effectively enact and enforce those measures, provide the stipulated machinery and establish such relationship with intergovernmental bodies.

The same reasoning applies to Article 30 which indicates the manner in which the Maritime Safety Committee shall submit proposals to the Assembly and report to it.

Articles 41 and 42 deal with the approval of the budget and the apportioning thereof, as well as with the discharging by each Member nation of its financial obligation. As previously stated, in connection with these Articles, the IMCO Assembly adopted its Resolution No. 20 on January 19, 1959 (IMCO/A.1. Resolution 20 "Apportionment of Expenses Among Members States") and such apportionment was based chiefly on tonnage registration under the flag, and not on the nationality of the private owners of vessels, or the nationality of experts, or the like. The United States representative brought this to the attention of the Assembly prior to the election. He pointed out the obvious logical correspondence between this criterion of the law of the flag, as regards financial apportionment, and the recognition of the same criterion for membership allocated to the largest ship-owning nations. Such effort failed. The majority

of the Assembly was already determined to exclude two of the largest ship-owning nations.

Article 60 is most illuminating. It should be quoted in full:

> "*Article 60.* The present Convention shall enter into force on the date when 21 States of which 7 shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties to the Convention in accordance with Article 57."

Thus we see that on so important a matter as the fixing of the date of entering into force of the Convention, no other criterion is adopted than tonnage registration governed by the law of the flag. No absurd thought came to the mind of the drafters of the Convention such as the one that the nationality of the private owners of the vessels, or the nationality of a given number of experts, should be the criteria for determining when a sufficient number of the maritime world was already committed so as to justify that the Convention should start to operate.

The above summary examination of certain related articles of the Convention clearly shows the intent that the law of the flag was the criterion for determining what a ship-owning nation was for the purpose of the composition of the Maritime Safety Committee, under Article 28. This examination the majority of the Assembly failed to make and Panama must now, respectfully, ask the International Court of Justice to make it for the Assembly.

It follows from the foregoing reasoning that the action of the majority of the Assembly violated the Convention not only by disregarding the clear mandate of Article 28, but also by disregarding the evident meaning of such provision as resulting from the interpretation of the Convention as whole.

3. *Panama's interest in maritime safety*

The Republic of Panama wishes, at this point, to state that although it was not necessary, for reasons previously explained, for Panama to show evidence of its important interest in maritime safety as regards the election of the first *eight* members, the Republic of Panama, at the time of the election, and indeed at all times, has consistently proved to have a very important interest in maritime safety.

The Republic of Panama does not grant flag registration to vessels in a capricious manner. Panama requires that vessels obtaining registration be properly surveyed and that their seaworthiness be determined by the highest specialists in the field, namely, Lloyd's American Bureau of Shipping or Bureau Veritas. (Annex II.)

Panama is a party (indeed one of the earliest parties) to the two most important Conventions relative to maritime safety, i.e. the Conventions for the Safety of Life at Sea (1929 and 1948) and the Load Line Convention (1930). (Annexes III, V and VI.) It is also

a party to the Telecommunications and Radio Convention (1947). (Annex VII.) Panama is also an active member of the agreement for Ice Patrol in the North Atlantic (Annex VIII), and of the 1948 International Regulation for the Prevention of Collisions at Sea. (Annex IV.)

Panama requires that all personnel working on vessels under Panama flag be provided with a proper Qualification Certificate, including the Captain, Engineer, Medical Officer, Officers, etc. A separate certificate is required of seamen, i.e. persons not rendering technical services. (Annex II.)

When a request is made for registration under the Panamanian flag the owner or agent for the vessel must submit to the Government accurate information as to *a)* the actual and former ownership of the vessel; *b)* kind of ship: steam, motor, tanker, etc; *c)* complete name and address of owner and its nationality, and, if a corporation, the name and address of the President, Treasurer and Secretary and their nationality; *d)* prior nationality of the ship; *e)* gross and net tonnage and underdeck tonnage; *f)* material of hull; whether steel, iron, timber, cement or mixed; *g)* kind of apparel; *h)* engine; whether steam or motor, number of cylinders and horsepower, name of builder; *i)* admeasurement: length, width and height; *j)* number of bridges, decks, masts and chimneys; *k)* traffic or service to which it is dedicated; kind of freight, whether general, dry or liquid; passenger transportation and number it can carry and kind of accomodations; *l)* year and place of construction and name of builder; name and address of firm responsible for radio bills; *m)* any other information for the complete identification of the vessel.

It is also required that the following documentation be presented: 1) Power of attorney of the party requesting registration; 2) Certificate showing that prior flag registration has been cancelled; 3) Title over the vessel; 4) Certificate of Admeasurement; 5) International load line certificate; 6) Certificate as to the number of passengers it may carry and the kind of accommodations thereof; 7) International Safety Radio-Telegraphy certificate under Safety of Life at Sea Convention; 8) Certificate of Seaworthiness (inspection of boilers, engines, hull, etc); 9) Sanitation certificate showing good hygienic and sanitary conditions; 10) Radio license request (must be filled by a radio technician or by the radio-operator). (Annexes II and IX.)

As previously stated, the load-line certificates, the certificates as to passengers which may be carried and accommodations therefor, the international radio-telegraphy safety certificate and the certificate of seaworthiness, must be issued by either one of the only authorities recognized by the Panama Government for that purpose, who are: Lloyd's Register of Shipping, American Bureau of Shipping or Bureau Veritas, indeed the world's foremost authorities on the subject.

And after all such proper documentation is presented, in good and due form, only *provisional* registration is granted for six months which is later, upon further verification, converted into permanent registration.

Satisfactory labor conditions on Panamanian ships are assured by Panama's Labor Code, one of the most modern and inspired by high standards of social justice. The pertinent provisions of the Code, and related legislation may be seen in Annex IX. Maritime workers are assured of advance notice, vacations, insurance of vessels, proper compensation in case of injuries, medical assistance, and all other proper guarantees.

The Republic of Panama can proudly assert that all necessary conditions of safety and proper labor treatment are met in a diligent and efficient manner by ships under its flag, and that, therefore, this campaign against ships under Panama registry, of which the present election is only a part, does not seem in reality to be dictated by any motive of safety or labor protection, but purely as a matter of devious economic competition from certain groups of maritime and labor interests. We do not deny to such groups the right to endeavor to foster their interest, if they wish to do so as private institutions. But when such pressures invade the field of official international action, and it is done by States constituting an international body, working under relationship with the United Nations, and for the alleged purpose of seeking international cooperation for the benefit of maritime trade and safety in general, we submit that the matter becomes a very serious one, and that this practice of malicious campaigning, of discriminatory and arbitrary action, must cease, for the sake of the seriousness that such international body must show to merit the respect and cooperation of other Governments.

The fact that no true motives of improving maritime safety and trade seem to animate these campaigns against the flags of Panama and Liberia is very well illustrated by the following quotation from the statement recently made by Mr. Walter L. Green, Chairman of the Board of Managers of the American Bureau of Shipping on January 27, 1959, and made public very soon after the election now under review by this Court. A foremost authority as the Chairman of the Board of the American Bureau of Shipping stated (Annex X):

> "There is in some quarters the belief that the fleets of Liberian and Panamanian registry are comprised largely of older ships sold out from under the flag of original registry as they are replaced by newer and more modern ships. The following figures will indicate how completely unfounded are any such beliefs in so far as the ships in Class with the Bureau are concerned. Of the 572 Liberian ships totalling over 7,000,000 gross tons in Class with the Bureau, only 23, or about 4 per cent, totalling 180,000 gross tons were built prior to the World War II construction program. Of the 249 Panamanian

ships totalling 2,450,000 gross tons now in Class with the Bureau, only 32, or less than 13 per cent, totalling 223,000 gross tons were prewar built. Of these ships, many were extensively altered and modernized to suit them for their present services as a part of the postwar reconstruction program.

In the Classed Liberian Fleet, 263 totalling 4,650,000 gross tons, which is 66 per cent of the total gross tonnage, and in the Classed Panamanian fleet 65 totalling 940,000 gross tons, which is 38 per cent of the total gross tonnage, are less than 15 years old. Of the Liberian fleet, 209 totalling 3,850,000 gross tons, which is 55 per cent of the total gross tonnage in Class, and of the Panamanian fleet 40 totalling 575,000 gross tons, which is 23½ per cent of the total gross tonnage, are less than five years old.

Since the ships built during the World War II construction programs still comprise a substantial segments of the fleets of many of the traditional maritime nations, nearly everyone associated with these ships is familiar with the fact that, in spite of the urgency with which they were needed, the standards of design and construction were not allowed to suffer. By and large, all of these ships were built to the then highest standards of classification societies. As far as the postwar built ships are concerned, all those in Class with the Bureau conform to the standards of our Rules, these being administered impartially irrespective of the flag of registry. *These ships are representative of the most modern up-to-date ships to be found anywhere in the World.* [Underscoring ours.]

The Governments of Liberia and Panama have entrusted to the Bureau, among a number of other classification societies, not only the inspections customarily carried out to insure the maintenance necessary to continue the Classification of the vessels, but, also, the added inspections required to assure compliance with the provisions of the International Load Line and the Safety of Life at Sea Conventions to which these nations are signatory. [Underscoring ours.] The Bureau is fully aware of the responsibilities entrusted to its Surveyors. All inspections are being carried out in a thoroughly diligent manner so as to satisfactorily discharge these responsibilities. In so far as the ships Classed with the Bureau are concerned, there can be no basis for considering these to be substandard."

4. *The election was capricious, discriminatory and arbitrary*

We have stated before that the existence of an "important interest in maritime safety" was, by the terms of Article 28, established beforehand in a final and conclusive manner as to the *eight* largest ship-owning nations, so that such nations were entitled to an automatic election in the Committee, without the Assembly being authorized to scrutinize the extent to which, in the individual opinion of Members, any of such eight nations had displayed such "interest" in maritime safety. And we have also stated that, even if it were assumed, for the sake of argument, that the Assembly could look into such matter, that did not give the Assembly the right to exercise its discretion capriciously or arbitrarily. Even under the aforementioned assumption, the Assembly was bound to determine

the existence or non-existence of such "interest" on the basis of criteria or conditions appearing in the Convention itself. No international organ, whether it be political or not, can act capriciously and without obedience to law. (See Advisory Opinion of the International Court of Justice, *supra,* on *Conditions of Admission of a State to Membership in the United Nations.*)

Let us now examine the criteria imposed upon the majority to exclude Panama and Liberia. We must say, in the first place, that the action of the majority was based on such vague, confusing and contradictory allegations that it becomes very difficult to ascertain precisely what was the decisive criterion used by the majority. The record shows a very scant offering of reasons. Most of the members opposing Liberia and Panama did not say anything, but merely cast their vote against them. Only two or three speakers for the opposition expressed their views, and as the leading one was the United Kingdom's representative, we must assume that the improperly motivated allegations he made served to sway the majority into this arbitrary action. It is evident that such allegations did not disclose any criteria or conditions contained in the IMCO Convention. It is also clear that such allegations were unsound and unreasonable.

Which were those allegations?

We find, in the first place, that the United Kingdom's representative begins by stating what amounts to saying that he will not "go behind the flag" in his consideration of this matter. According to the record, he said: "There was clearly no question of dealing with the problem of flags of convenience, which lay outside the limits of that discussion." (Reference *supra.*) Yet he does in effect go "behind the flag" when he said: "Vessels had really to belong to the countries in question, which was obviously not the case with Panama and Liberia." (Reference *supra.*)

He succeeded in imposing as a condition that nations should own, in the civil sense, the ships, a condition not present in the Convention and a very unsound and unreasonable one. It was unsound because, as it has been shown, both by law and by maritime usage and practice and by treaty provisions binding upon the Assembly members, the character of being a ship-owning nation is determined by tonnage registration under the flag and not by civil ownership. And since, as it has been demonstrated, a nation is free to grant such registration to whom it pleases and to fix, as a purely internal sovereign attribute, the conditions under which such registrations would be granted, this attempt to analyze the private ownership of vessels and the nationality of such private owners was not only unlawful but it was an interference in the internal affairs of a nation. Furthermore, the Assembly was creating a rule of impossible application, since there is no feasible way of drawing the line as to how far any one can go into determining such private ownership, which may be distributed into various nationalities, or may even

remain unknown by reason of bearer titles of ownership. No criteria could be more unsound and unreasonable.

The action was not only unsound and unreasonable. It was contradictory. Because the same representative of the United Kingdom was at the time proposing, as the basis for the election, the adoption of a list (Lloyd's) where ship-owning nations were listed in the order of tonnage under flag registration and without regard to private ownership. And it was on the basis of this list that the election was held and Panama and Liberia were excluded, although they appeared as eighth and third, respectively, in such list, and the two nations improperly elected to substitute them appeared as ninth and tenth. No more caprice can be shown in an election conducted in such manner.

Then the United Kingdom's representative—while still pretending that he was not going "behind the flag"—stated the following:

> "In regard to Liberia's interest in questions of maritime safety, it was undeniable that the vessels registered in that country were among the most modern and up-to-date in the world. That was due to the fact that the Liberian Merchant Navy largely belonged to excellent American ship-owners and that, furthermore, because Liberia left questions of administration to very experienced international companies such as Lloyd's. The same was true of Panama. But the matter in hand was not the election of the United States or of those companies to the Maritime Safety Committee. What the Assembly had to do was to consider how far governments were interested in maritime questions and see to what extent they were able to make a contribution in specific fields such as the furnishing of crews, the training of naval architects, the conducting of surveys after collisions, the handling of cargoes, etc...." (IMCO/A.I./SR.7.)

Here, again, we see the imposition of conditions not present in the Convention and which were unsound and unreasonable conditions. To investigate the nationality of crews, or that of naval architects, or of other experts chosen by a nation in connection with the administration of ships under its flag, were matters solely of the internal concern of such nation, as hereinbefore demonstrated, and into which the Assembly members could not go without infringing the sovereignty and private domain of such nations. And such improper meddling was all the more forbidden when the speaker himself was admitting the excellent quality of the ships and of the foreign personnel chosen by such nations to take care of those matters. Since when, may we ask, is it improper or inadvisable for a nation to secure the services of foreigners of the highest qualifications in order to perform more efficiently its duties as regards maritime safety? Is it not absurd that an international organ such as IMCO, which is seeking international cooperation in the field, should now become so regressive as to inject this nationalistic and chauvinistic idea in a field where it is seeking international collaboration? We say that the action of a Government which seeks to obtain the best

kind of expert knowledge wherever it can find it, shows, if anything, a very marked and important interest in maritime safety. (We may remark, in passing, that the reference to nationality of crews was entirely out of place because this is one of the factors which, under Article 28, must be taken into consideration in selecting the remaining *six* members of the Committee, but not the initial *eight* members.)

The record shows that the above allegations constituted the sole criteria or conditions chosen by the majority of the Assembly to exclude Liberia and Panama.

We repeat once more: the action of the Assembly majority was not only unlawful but also contradictory. It asserted that it was not going "behind the flag" and it was, in effect, going "behind the flag". It admitted Panama's and Liberia's high standards of efficiency and safety as to the construction and administration of ships under their flags, yet it excluded them as though they did not possess such high degree of efficiency and safety. It claimed that private ownership of vessels should be a leading criterion, and yet it made a wrongful election on the basis of a most reputable list which did not show private ownership but only tonnage registration under the flag of each nation.

The action of the Assembly majority could not have been more capricious.

The action of the IMCO Assembly was clearly and unlawfully discriminatory against Panama and Liberia. We develop this more fully subsequently, when stating the protest of the Republic of Panama. All nations have equal rights and status under international law and under the Charter of the United Nations. One flag is just as much a symbol of sovereignty and entitled to the same respect as the other. No member of IMCO or of any other organ, for that matter, is entitled to disregard and disrespect one nation and one flag for the sake of giving an unduly privileged position to another nation or flag. And this duty not to discriminate should have been more compelling to an Organization which had, by its very constitutive instrument, the function of fomenting "the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade".

Having acted so capriciously and in such a discriminatory manner, it is evident that action of the Assembly majority was an arbitrary one. And it was more arbitrary because it so acted after the leading representatives of some of the highest maritime nations had adverted the Assembly as to the illegality, the impropriety, and the arbitrary nature of the action it was about to take. The majority did not heed such warnings. The arbitrary action was consummated and it now becomes imperative that such arbitrariness be corrected.

We refer again to the Advisory Opinion of the International Court of Justice in the matter of *Conditions of Admission of a State to Membership in the United Nations* (citation *supra*) in which the Court clearly held that the political character of an organ does not

authorize it to act arbitrarily. And it is also very opportune to cite, in this connection, the language of the Permanent Court of International Justice in the case of *Treatment of Polish Nationals in Danzig* (P.C.I.J., Series A/B, No. 44, page 28):

> "It should be remarked that the prohibition against discrimination, in order to be effective, must ensure the absence of discrimination in fact as well as in law. A measure which in terms is of general application, but in fact is directed against Polish nationals and other persons of Polish origin or speech, constitutes a violation of the prohibition."

C. *The violation of the law of the flag was a violation of the sovereignty of the Republic of Panama*

This grave and very serious aspect of this case is developed more fully hereinafter under the heading of "The Protest of the Republic of Panama". It may suffice at this juncture to say that the action of the Assembly majority violated well-known principles of international law to the effect that a vessel is subject to the jurisdiction and sovereignty of the nation whose flag it flies; that it also violated the well-known principle of international law and also of the Charter of the United Nations (of which all IMCO States are members) which prohibit intervention in matters which are essentially within the domestic jurisdiction of any State and also the principle that the sovereign equality of all States shall be recognized and respected.

The action of the IMCO Assembly constituted, therefore, a violation of the sovereignty and dignity of the Republic of Panama.

IV. The Protest of the Republic of Panama

Most respectfully, but also most vigorously, the Republic of Panama presents its protest for the unwarranted and wanton violation of its sovereignty and dignity by the majority of the IMCO Assembly.

We realize that very high and honourable as this forum is, it may not be the most proper place for the lodging of this protest. But a sovereign State, in presenting the statement of its position before this highest court of international justice, cannot refrain from filing such protest when the action now under review by this Court has been shown to be so arbitrary, capricious and discriminatory on so delicate and serious a matter as the respect to which a sovereign nation is entitled. And this being a request for an Advisory Opinion, regarding the initial functioning of an international organ seeking, by its very constitutive instrument, cooperation and proper understanding among its members, it seems pertinent that the Court should take cognizance, in rendering its advice to such organ, of the fact that the offence committed against a sovereign nation is of the utmost gravity so as to compel such nation to file its strong and indignant protest.

The principle of the sovereign equality of nations is so well-settled as to need no specific citations thereon or any elaboration thereof. It may be said that such principle is the first basis of international law and order. It is expressly consecrated as the first principle (Article 2, par. 1) of the Charter of the United Nations, of which all IMCO States are members, and which mandate such members were particularly bound to respect by virtue of the agreement of relationship entered into between the two international organizations. When the majority of the IMCO Assembly sought by its wanton and arbitrary action to displace two nations from membership in an important international organ, and to substitute for them two other nations for no other reason than the caprice or arbitrary whim of certain States who had confabulated to perpetrate such exclusion, this discriminatory action can be nothing else but a wilful violation by such States of the principle of sovereign equality among all nations.

The respect which is due to a sovereign State carries with it, as a necessary corollary, that no State or organization of States should meddle or interfere into the internal affairs of a nation or into matters which are essentially within its domestic jurisdiction. This is also a well-settled and cardinal principle of international law, also embodied in the Charter of the United Nations (Art. 2, par. 7). We have shown that, under international law, a State exercises jurisdiction and sovereignty over vessels registered under its flag and that it is free to grant its flag registration to whoever it desires and to establish at its sole will and discretion the conditions and requisites pertaining to such registration. When the Assembly majority undertook to scrutinize and make its vote dependent upon the nationality of private owners of vessels under the Panamanian flag, or on the nationality of their crews, or the nationality of the experts or technical individuals or organizations rendering services to Panamanian vessels, the IMCO Assembly was meddling and interfering with the internal affairs of Panama and violating its sovereign jurisdiction.

For all this action, we must reiterate, the Republic of Panama presents its most vigorous protest.

V. Conclusion

The following summary may be given of the propositions which have been demonstrated in the foregoing pages of this statement:

1. That in the election of the first *eight* members of the Maritime Safety Committee, Panama and Liberia were automatically entitled to be elected as being among the eight largest ship-owning nations on the basis of tonnage registration under their flags.

2. That there was no right on the part of the Assembly to determine to what extent Panama and Liberia had shown an im-

portant interest in maritime safety, because, as to the eight largest ship-owning nations, such ownership was in itself final and conclusive proof of such important interest.

3. That the Assembly majority had in effect accepted such criterion when it had proposed that the election should be held on the basis of Lloyd's list of registered tonnage, which list did not refer to ownership in a private sense, or to any other conditions, but only to the number of tons registered under the flag of each nation.

4. That the Assembly, nevertheless, proceeded to consider and to make its vote dependent upon alleged extrinsic factors, not authorized by the Convention, such as the private ownership of vessels under Panamanian and Liberian flags, or the nationality of their crews, or the nationality of the experts or technical organizations rendering services to such vessels.

5. That this attitude of the Assembly was not only in violation of the IMCO Convention, but also in violation of well-known principles of international law and of treaty law as well as of general usage and practice, to the effect that the character of a "ship-owning nation" is determinable solely by flag registration and not by the private ownership of the vessel, the nationality of the crew or any other similar criteria.

6. That the Assembly proceeded with this improper election despite the fact that leading members of IMCO had pointed out in a clear and strong manner that the action which was being taken was contravening the IMCO Convention and international law and practice.

7. That the election was held and Liberia and Panama being, respectively, the third and eighth ship-owning nations were wrongfully deprived of their membership in the Maritime Safety Committee and substituted by France and Germany who are, respectively, the ninth and tenth ship-owning nations.

8. That the criteria adopted by the IMCO Assembly to deprive Panama and Liberia of their lawful membership were also in violation of the fact that Panama and Liberia have, in fact, demonstrated at all times to have a proper and a very important interest in maritime safety, as well as very high standards of efficiency and safety.

9. That no definite or sound criteria were adopted by the IMCO Assembly majority in ruling that Panama and Liberia were not eligible for the membership to which they were entitled, and the action of the Assembly was capricious, discriminatory and arbitrary.

10. That the action of the Assembly was a violation of the sovereignty and dignity of the Republic of Panama and also a violation of well-known principles of equality of all sovereign States and of

non-intervention into the internal affairs of a sovereign State, well-settled under International Law and embodied in the Charter of the United Nations.

11. That such wanton action justifies the protest herein presented by the Republic of Panama.

The above propositions having been clearly established, the conclusion naturally follows that this Advisory Opinion should be answered, as the Republic of Panama most respectfully begs, in the sense that

> "The Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on the 15th of January, 1959, was *not* constituted in accordance with the Convention for the establishment of the Organization."

Respectfully submitted,
For the Republic of Panama,
(Signed) Octavio FÁBREGA,
Agent and Special Ambassador
Plenipotentiary.

Annex I

LLOYD'S REGISTER OF SHIPPING. STATISTICAL TABLES 1958

[Not reproduced]

Annex II

November 20, 1959.

The undersigned, Minister of Foreign Affairs of the Republic of Panama,

HEREBY CERTIFIES:

That the Regulation issued by the Government of Panama pursuant to Law No. 8 of 1925, governing the registration of vessels under the Panamanian Flag, is of the following tenor:

Panamanian Consular officers are authorized by law to grant provisional registration and issue provisional certificates of registry (valid for SIX MONTHS) to vessels in excess of FIVE HUNDRED (500) net tons which seek enrolment in the Registry of the National Merchant Marine, provided they shall comply with the requirements and shall observe the procedure set forth below:

1. *Application for Registration*

The owner of the vessel, or his agent, should file a written application on stamped paper or qualified paper, setting forth the following information:

(a) Present and former names of the vessel;

(b) Kind of vessel: whether steam, motor, tanker, yacht, sailing, etc.

(c) Full name and address of the owner and his nationality (in the case of corporations, state name, nationality and address of the President, the Treasurer and the Secretary);

(d) Former nationality renounced by the vessel;

(e) Tonnage: net, gross and under deck;

(f) Material of the hull: wood, cement, iron, steel or mixed;

(g) Kind of tackle and rigging;

(h) Machinery: steam, motor, number of cylinders and horsepower; name of the manufacturers;

(i) Principal dimensions: length, breadth and depth;

(j) Number of bridges, decks, masts and funnels;

(k) Traffic and service engaged in (kind of cargo, whether general, dry, wet; transportation of passengers, number it may carry and class of accommodation; fishing, pleasure, etc.);

(l) Year and place of building of the vessel and name of builders; full name and address of the person or company liable for the payment of the radio bills of the vessel;

(m) Any other information which may serve to identify the vessel more fully.

2. *Documentation to be filed*

(1) Power of attorney or authorization in favor of the agent making the application for registration;

(2) Official certificate or document accrediting that the vessel has cancelled its former registration;

(3) Title of Ownership of the vessel (the bill of sale should be bilateral);

(4) Certificate of Survey (or Admeasurement) of the vessel;

(5) International load line certificate;

(6) Certificate as to the number of passengers vessel may carry, setting forth the accommodation (class);

(7) International certificate of Radio-Telegraphic Safety (International Convention on Safety of Human Lives at Sea);

(8) Certificate of Seaworthiness (inspection of boilers, engines, hull, etc.);

(9) Health Certificate accrediting good hygienic and sanitary conditions on the vessel;

(10) Application for Radio Licence (forms to be filled out by a technician skilled in matters of radio, or by the radio operator of the vessel).

3. *Use, Issuance and Renewal of Certificates of Qualification and Seamen's Cards*

I. OBJECT

For the purpose of standardizing the documents of the consular service, the Shipping Bureau has supplied and will continue to supply a new type of Certificate of Qualification and of Seaman's Card. These documents will provide an increase in the collection of consular fees and at the same time will facilitate the control of said collection.

II. AUTHORITY

Decree Law No. 4 of April 9, 1954 (New Consular Tariff), Articles 6, 7, 8, sub-sections 24, 25, 26 and 27.

III. ISSUANCE

All persons working or rendering service on national vessels (Panamanian) must be provided with a Certificate of Qualification or Seaman's Card. Certificates of Qualification are issued in favor of persons performing skilled tasks on board the vessel, such as Master, Engineer, Doctor, Mates, etc.; and Cards are issued to members of the Crew not performing technical services, that is to say, the seamen.

The requirements to be satisfied for the issuance of a Certificate of Qualification are set forth on the last page thereof.

The Consuls of the Republic are authorized to issue such documents abroad; and in Panama, the Inspectors of the Ports. The General Inspectorate of Labor in Panama is also authorized to issue Seamen's Cards.

On issuing such documents, care should be taken to fill in all the information and details required thereby.

For each Certificate or Card issued, there should also be prepared, in *duplicate*, the respective registration card. The original card shall be for the Shipping Bureau and the duplicate for the files of the Consulate.

IV. FEES

For the issue, renewal or registration of promotions of the Certificates of Qualifications, a charge of B/5.00 shall be made for each service.

A charge of B/2.00 shall be made for the issue and B/1.00 for the renewal of each Seaman's Card.

V. COLLECTION CONTROL

The fees caused by the Certificates and Cards shall be paid by the holders of said documents.

IN WITNESS WHEREOF, this Certificate is issued in Panama on this 20th day of November, 1959.

(Signed) Miguel J. MORENO Jr.,
Minister of Foreign Affairs
of the Republic of Panama.

. . . . . .

The foregoing is a translation of the original in the Spanish language, made by me in the City of Panama, Republic of Panama, on this 21st day of November, 1959.

(Signed) Sydney J. WILLIAMS,
Public interpreter of the
Republic of Panama.

Annex III

CERTIFICATE BY LEGAL COUNSEL OF UNITED NATIONS RELATING TO PANAMA'S ACCESSION TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, SIGNED AT LONDON ON 31 MAY 1929

[Not reproduced]

Annex IV

CERTIFICATE BY LEGAL COUNSEL OF UNITED NATIONS RELATING TO PANAMA'S ACCEPTANCE OF THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1948, APPROVED BY THE INTERNATIONAL CONFERENCE ON SAFETY OF LIFE AT SEA ON 10 JUNE 1948

[Not reproduced]

Annex V

CERTIFICATE BY LEGAL COUNSEL OF UNITED NATIONS RELATING TO PANAMA'S ACCEPTANCE OF THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1948 (WITH ANNEXED REGULATIONS), SIGNED AT LONDON ON 10 JUNE 1948

[Not reproduced]

Annex VI

CERTIFICATE BY LEGAL COUNSEL OF UNITED NATIONS RELATING TO PANAMA'S ACCESSION TO THE INTERNATIONAL LOAD LINE CONVENTION SIGNED AT LONDON ON 5 JULY 1930

[Not reproduced]

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Annex VII

CERTIFICATE BY THE MINISTER OF FOREIGN AFFAIRS OF PANAMA RELATING TO PANAMA'S RATIFICATION OF THE INTERNATIONAL CONVENTION ON TELECOMMUNICATIONS AND RADIO COMMUNICATIONS, SIGNED AT ATLANTIC CITY ON 2 OCTOBER 1947

[Not reproduced]

Annex VIII

CERTIFICATE BY THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA RELATING TO PANAMA'S PARTICIPATION IN THE AGREEMENT OF 4 JANUARY 1956 REGARDING FINANCIAL SUPPORT OF THE NORTH ATLANTIC ICE PATROL

[Not reproduced]

Annex IX

MARITIME LAWS OF THE REPUBLIC OF PANAMA. ENGLISH TRANSLATION BY JORGE FABREGA P. PANAMA CITY, 1954

[Not reproduced]

Annex X

AMERICAN BUREAU OF SHIPPING,
Forty-five Broad Street,
New York 4. N.Y.

November 9, 1959.

The attached press release dated January 27, 1959, is hereby certified to be an exact copy of the press release which was issued at the time of the Annual Meeting of the Members of the American Bureau of Shipping on January 27, 1959. It covers, in general, the remarks made at the Meeting by Mr. Walter L. Green, at that time Chairman of the Board of Managers of the American Bureau of Shipping, and since retired.

(Signed) David P. BROWN,
President.

January 27, 1959.

Press Release—Immediate

The 97th Annual Meeting of the Board of Managers and the Members of the American Bureau of Shipping was held today in the Bureau's board room, 45 Broad Street, New York City.

Mr. Walter L. Green, Chairman of the Board, presided and expressed to more than 70 Managers and Members his appreciation of their attendance.

Mr. Green was reelected as Chairman of the Board of Managers, and Mr. David P. Brown was reelected President of the Bureau.

Mr. Lewis C. Host was elected Senior Vice President.

Mr. Arthur R. Gatewood was reelected Vice President—Engineering.

Mr. Alfred Blum was elected as Vice President—Finance and Mr. Kurt Molter was elected Treasurer.

Mr. Daniel L. Parry was reelected as Secretary.

Reappointed as Assistant Vice President was Mr. Harold M. Wick and Mr. William H. C. Seelig as Assistant Secretary.

The following were reelected or elected to the Board of Managers:

For the Three-Year Term Expiring January, 1962:

James A. Farrell, Jr.	Cletus Keating	John D. Reilly
John M. Franklin	Charles Kurz	Daniel D. Strohmeier
Gene C. Hutchinson	Edward G. Maddock	Carl F. Vander Clute
Harold Jackson	Joseph A. Moore, Jr.	Alexander T. Wood
Willard F. Jones		

The following were elected to the Membership of the American Bureau of Shipping:

Alfred P. Jobson, Executive Vice President,
Marsh and McLennan
New York, New York

Riley O'Brien, Fleet Manager,
Inland Steel Company
Chicago, Illinois

William F. Rapprich, Manager,
Marine Department,
Cleveland-Cliffs Iron Company
Cleveland, Ohio

Henry G. Steinbrenner, President,
The Kinsman Transit Company
Cleveland, Ohio

Captain J. C. Woelfel, Manager,
Marine Department,
Richfield Oil Corporation
Long Beach, California

In his remarks, Mr. Green said:

"This is the 97th Annual Meeting of the Members of the American Bureau of Shipping and I submit the report of the Bureau's operations for the year 1958.

"On January 1, 1959, 376 seagoing vessels of 7,454,319 gross tons and 5 Great Lakes vessels of 74,100 tons were under construction and/or under contract to be Classed with the Bureau. In addition, there were 165 smaller miscellaneous type vessels aggregating 111,267 gross tons also contracted for to be built under the supervision of the Surveyors to Class with the Bureau. This new construction totals 546 vessels of 7,639,686 gross tons. This is a decrease of 1,000,000 tons from the tonnage totals of one year ago, which at that time represented the greatest tonnage under way to Bureau Class at the start of any peacetime year. One year ago, contracts were in existence for the construction of 694 vessels of 8,631,258 gross tons to Bureau Class.

"Of these 546 new vessels now being built to Bureau Class, 190 of 1,244,310 gross tons are on order in United States shipyards, compared with 1,941,164 tons in January, 1958. This includes 57 ocean going cargo ships, tankers, and a passenger vessel, of 1,082,400 tons; 5 Great Lakes bulk carriers of 74,100 tons, and 128 miscellaneous vessels such as *tugs, towboats, barges, ferries, offshore oil well drilling rigs,* etc., aggregating 87,810 gross tons.

"A total of 356 new vessels of 6,395,376 gross tons are on order in yards outside of the United States to be built to American Bureau of Shipping Classification. This is more than five times the amount of tonnage currently under way in American yards to Bureau Class. A number of these will be finished in 1959, but others will not be completed until 1964. These 356 new vessels are being built in 20 countries, a record number for the Bureau, and include 9 under way in United Kingdom shipyards, 21 in France, 14 in Belgium, 13 in Sweden, 66 in Germany, 73 in Italy, 10 in Spain, 32 in Holland, 2 in Turkey, 90 in Japan, 5 in Argentina, 6 in Denmark, 3 in Greece, 1 in Lebanon, 1 in Israel, 2 in Taiwan, 2 in Brazil, 3 in Egypt, 1 in Curacao, and 2 in Canada. Exclusive Bureau Surveyors are maintained at practically all of the shipyards

abroad at which these vessels are being built. These new vessels include tankers, bulk ore carriers, cargo ships, passenger liners, ferries, tugs and barges.

"Applications for Class covering vessels to be constructed were received during 1958 for a total of 389 of 2,083,311 gross tons. This is a decrease of 2,466,248 tons over the 1957 figure, which totalled 632 vessels of 4,549,559 tons. About 72 percent of the tonnage covered by the 1958 applications for Class will be built in shipyards outside of the United States, this aggregating 1,611,666 tons, while the tonnage to be built in United States shipyards, as represented by these applications, totals 471,645 tons.

"A total of 484 new vessels were completed in 1958 under the supervision of the Surveyors of the American Bureau of Shipping. These aggregated 2,414,886 gross tons and 3,763,631 deadweight tons, and employed 1,696,987 horsepower of propelling machinery. This represents an increase of 111,958 tons from the gross tonnage (2,302,928) of new vessels completed to Bureau Class in 1957.

"Of these 484 new vessels, 352 were completed in United States shipyards, these totalling 777,848 gross tons. This included 29 large merchant vessels totalling 534,683 gross tons. The balance of 323 were miscellaneous river, harbor and offshore oil drilling vessels, principally non-propelled, totalling 243,165 gross tons.

"A total of 132 new vessels were completed to Bureau Class in shipyards outside of the United States during 1958, these aggregating 1,637,038 gross tons. This represents a decrease of 124,828 tons over the 1957 results, when 133 new vessels of 1,761,866 gross tons were completed in these yards to Bureau Class. For the sixth time in the 97 year history of the Bureau, more new tonnage was completed to Bureau Class in shipyards abroad than in United States yards. Again, as in recent years, a large number, 42, were constructed in Japan, while 43 were finished in Italy, 4 in Great Britain, 5 in Belgium, 12 in Germany, 7 in Holland, 3 in France, 1 in Sweden, 4 in Israel, 1 in Lebanon, 4 in Spain, 2 in Turkey, 3 in Hong Kong and 1 in Argentina. In addition, some repair and alteration work on existing vessels was accomplished in ports abroad under Bureau supervision.

"There now exist in Class with the American Bureau of Shipping, 8,163 vessels of 45,246,738 gross tons, which is an increase of 1,663,465 tons over one year ago. About 20 percent of these vessels are temporarily inactive. To these totals there will be added the 546 vessels now on order to be built to Bureau Class in shipyards throughout the world, making a grand total of 8,709 vessels of 52,886,424 gross tons. A substantial percentage of these vessels are owned and/or registered in countries other than the United States. These figures include seagoing tonnage, Great Lakes and river craft, both self-propelled and non-propelled. During the past year a number of existing vessels owned abroad were Classed by the Bureau.

Technical Activities

"Plan approval work, measured in number of plans submitted, declined during the year below the all-time high level of 1957 and even somewhat below that of 1956. However the new and special types of ships involved required nearly as many man hours of work on the part of the technical staff.

"Research in connection with the expansion and improvement of the Rules has continued to go forward and this has resulted in two important developments, both of which have been approved by the Technical Committee. Tentative Rules for the structural design of tankers, up to the largest sizes now contemplated, are now available to builders and designers in pamphlet form. It is expected that after a period of use, and particularly as a result of continuing research into the problems of structural performance under service conditions, some refinements may be found desirable to be made to these rules, and that they then may be included in the formally published "Rules for Building and Classing Steel Vessels".

"The method of determining the required effective sectional areas of the strength decks of the normal types of cargo vessels has been modified to reflect more accurately the effect of changes in beam on the requirements for longitudinal strength and the modifications are included in the 1959 issue of the Rules which will be available for distribution at an early date.

"Considerable interest continues to be shown in the development of special types of vessels designed to carry cargo in large containers from 15 to 35 feet in length, stowed in specially designed guides, and handled by traveling cranes carried on board ship. Both new and existing vessels are involved in this activity. Interest is also being shown in the inclusion, in some of the contemplated designs of general cargo ships, of certain spaces which will be adaptable for the loading and unloading of truck trailers on wheels. Both of these developments involve unusual structural arrangements which require the most thorough studies and extreme care in their development to insure that the structural integrity of the ship itself is not unduly sacrificed.

"The use of aluminum for small vessels continues to increase. Designs for three types of barges and a seagoing tug have been approved. A number of miscellaneous types of small craft used in off-shore oil drilling operations are being made of this light material.

"The Bureau has continued its active participation in the development of nuclear power for merchant ships. The building to Class with the Bureau of the world's first nuclear powered merchant ship, the combination passenger and cargo liner 'Savannah', is proceeding at such a pace that it is expected she will be launched early this summer. The fabrication of the main nuclear components is almost complete and their installation in the containment vessel will commence this spring. Most of the vital systems are in the process of being shop tested prior to delivery to the shipyard. Critical experiments, which were started some time ago, are proceeding with investigations which will establish the nuclear properties of the reactor core and the proper fuel loading sequence. The production of fuel elements has been started and it is anticipated that the ship's reactor will go critical in the spring of 1960.

"In anticipation of the construction of the 'Savannah' and the possible rapidly increasing adaptations of nuclear power to merchant ships, there was organized in 1955 under the sponsorship of the Ships' Machinery Committee of the Society of Naval Architects and Marine Engineers a special panel to collect such information regarding nuclear power as would be of interest to ship designers, builders and operators. Later that year the United States Coast Guard, to which organization is entrusted by legislation the responsibility for the safety of United States

merchant ships, requested the Society to authorize this special panel to act in an advisory capacity in the development of recommendations for the safe application of nuclear power to such ships. The Society agreed to this request and the membership of the panel was expanded to include experts in the field of design, application, construction and operation of nuclear reactors, as well as representatives of ship designers, builders and operators. The work of this panel has been vigorously pursued and has now reached the stage where it is expected that within a very short time there will be available from the Society of Naval Architects and Marine Engineers copies of a document prepared by the panel entitled 'Safety Considerations Affecting the Design and Installation of Water-cooled and Water-moderated Reactors on Merchant Ships'. This publication should prove to be of great value, not only to regulatory bodies, but, also, to any who are interested in the design, construction and operation of nuclear powered merchant ships.

"Since its inception, Mr. Arthur Gatewood, our Vice-President—Engineering, has been the Chairman of this panel and several members of our staff have had an active participation in its deliberations.

"In anticipation that there will be included in the new International Safety of Life at Sea Convention scheduled to be held in 1960 an additional chapter covering nuclear powered ships, there has recently been formed under the auspices of the United States Coast Guard a subcommittee to prepare for the United States delegation attending that Convention the proposals to be made, and to consider proposals which may be made by other participating nations for international agreement. The membership of this subcommittee closely parallels that of the panel operating under the auspices of the Society of Naval Architects and Marine Engineers, but it has been expanded in number so as to completely cover all phases of the shipping industry liable to be affected by international agreements. Mr. Gatewood is also serving as Chairman of this subcommittee and several members of the staff are also participating in the work.

General Comments

"Largest of the vessels completed to Bureau Class during 1958 were the tankships 'Universe Defiance', 'Harold H. Helm' and 'George Champion', vessels of 85,515 deadweight tons constructed by the Kure Shipyards Division, Japan, of the National Bulk Carriers for Universe Tankships, Inc. Four sister ships were finished in 1956 and 1957. Eclipsing these huge vessels in size is the 104,520 deadweight ton tanker 'Universe Apollo' launched at Kure last December and scheduled to be completed early this year. The Kure yard also completed for the same owner the 43,805 deadweight ton oil carrier 'Edward L. Steiniger', and the 7,282 ton tanker 'Stanvac Malacca'.

"Among the many other big tankers completed to Bureau Class in Japan was the 'Goho Maru', of 47,248 tons, built by Harima Shipbuilding & Engineering Co. for Iino Kaiun K.K., and the sister ships 'Neapolis' and 'Mary Lou', of 39,000 tons, ordered by Magrande Compania Naviera and the Transoceanic Petroleum Carriers. The oil carrier 'Andros Triumph' was finished by the Mitsui Shipbuilding and Engineering Co. for one of the affiliates of the Orion Shipping and Trading Co. The Mitsubishi-Yokohama yard completed the 41,850 ton sister tankers 'Andros Tower' and 'Andros Thrill', also for affiliates of Orion Shipping

and Trading Co. At the Nippon Steel Tube Co. Tsurumi yard two 40,650 ton tankers, the 'Michael Carras' and the 'Aquagem' were constructed to Bureau Class for Oceanic Petroleum Steamship Co. The Mitsubishi-Hiroshima Yard completed 5 cargo vessels of 15,000 tons each for export. Delivered by Mitsubishi Nippon Heavy Industries, Kobe, was the 33,215 ton tanker 'King Peleus', built for Myrmidon Shipping Co.; the 'Caltex Arnhem', of 32,270 tons, for Nederlandsche Pacific Tankvaart; and 'No. 2 Tsubame Maru', of 33,300 tons, for Maruzen Oil of Panama. Kawasaki Dockyard Co. finished for Triton Shipping, Inc., the huge combination ore or oil carriers 'Epic' and 'Dynamic', of 46,200 tons. A sister ship, the 'Cosmic', had been completed in 1957. At the Mitsubishi Shipbuilding & Engineering Co., Nagasaki Works, the 46,300 ton tankers 'Massachusetts Getty' and 'Pennsylvania Getty' were completed for Transoceanic Shipping Corp. The 'Esso Uruguay' and 'Esso Peru', of 35,650 tons, were delivered to Panama Transport Co. and the 42,500 ton tankships 'Naess Leader' and 'Naess Explorer' were built for the Naess Shipping Co. interests. Also completed at the Nagasaki Shipyard was the 42,800 ton tanker 'Santiago', ordered by Texaco (Panama), Inc., and the 'Cuyama Valley', a tanker of 45,800 tons, for Globe Tankers Inc. The Innoshima yard of the Hitachi Company delivered the 'Caltex Eindhoven', of 31,780 tons, to Nederlandsche Pacific Tankvaart, while their Osaka plant completed the 20,300 ton cargo ship 'Delphic Eagle' for Sea Enterprises Corp. About 1,009,000 gross tons of new vessels are scheduled to be completed to Bureau Class in Japan during the current year, the total there now on our books aggregating 2,197,000 tons, which is a decrease of 360,000 tons from last year's total. Practically all of this new tonnage is for export.

"One passenger vessel was completed to Bureau Class in Italy during 1958. This was the liner 'Federico C.', of 20,416 gross tons, built for the Lloyd Tirrenico Line by the huge Genoa yard of Ansaldo. This yard also finished the 48,380 deadweight ton tankship 'Agrigentum' for Compagnia Trasporti Petrolio S.p.A. di Palermo. In addition, the Ansaldo-Genoa yard completed three sister tankships of 31,300 tons, these being the 'Mirador' for Mirador Compania Naviera Panamena; the 'Elios' for Societa Elios Palermo (Sicily); and the 'Sicilmotor' for Sicilnavi, Siciliana di Navigazione. Also, the bulk carrier 'White River', of 15,930 tons, was delivered to International Navigation Corporation. An outstanding event at the Ansaldo-Genoa plant last year was the launching last December of the luxury transatlantic passenger liner 'Leonardo Da Vinci'. This is a twin screw vessel of 30,500 gross tons being built for the Italian Line.

"A 35,600 deadweight ton tanker was delivered by the San Marco yard of Cantieri Riuniti dell'Adriatico. This was the 'Mariarosa Augusta', constructed for Societa' Armatoriale Prora S.p.A. of Palermo (Sicily).

"At the Monfalcone shipyard of Cantieri Riuniti dell'Adriatico two tankers of 35,560 tons were delivered to the Panama Transport Co., these being the 'Esso Panama' and 'Esso Argentina'. They are the second and third of an order for six tankships placed by the Standard Oil Company, N.J. Also finished were the sister cargo ships 'Pia Costa' and 'Maria Costa', vessels of 18,400 tons, built to Bureau Class requirements for the Costa Line.

"Two tankers of 31,500 tons were constructed for Nereide Societa di Navigazione—the 'Felce' at the Leghorn yard of Ansaldo and the 'Polinice' at the Ansaldo La Spezia yard. The latter yard also completed

two bulk carriers of 17,000 tons. One of these, the 'Porto Marghera', was delivered to Societa Vetrocoke of Turin, while the 'La Pintada' went to La Pintada Compania Naviera Panamena.

"Two of three bulk carriers ordered by Phs. Van Ommeren of Rotterdam were completed by Cantieri del Mediterraneo. These were the 'Ossendrecht' and the 'Zwijndrecht', vessels of 16,750 tons.

'At the Ancona yard of Cantieri Navali Riuniti two tankships of 35,600 tons each were finished to Bureau Class. First of these was the 'Agua Clara', ordered by Compania Naviera Panamena, and the 'Agip Ravenna', built for Agip S.p.A. of Rome.

"In Italy there is now a total of 961,667 gross tons of merchant shipping building to Bureau Class, this representing a decrease of 171,000 tons over the January, 1958, total. Most of this is for Italian owners and registry. Of this total, approximately 400,000 tons is scheduled for completion in 1959, which includes the 35,500 deadweight ton liquid petroleum gas tanker 'Esso Puerto Rico' now nearing completion for the Panama Transport Co. at the Monfalcone shipyard of Cantieri Riuniti dell'Adriatico.

"In France, the 38,300 ton tanker 'Esso Parentis' was built to our Classification requirements for Esso Standard, Sté. An. Française by Chantiers de l'Atlantique. The 'Fina America', a tanker of 33,800 tons was delivered to Petrofina S.A., Belgium, by Chantiers Navals de la Ciotat, and the 'Artois', a tanker of 20,200 tons, was completed by Ateliers and Chantiers de la Seine Maritime for Société Française de Transports Pétroliers. Of the 453,600 gross tons now building to Bureau Class in France, all but 2 vessels are for French interests and registry. Included is the 60,000 gross ton, 2,000 passenger, luxury passenger liner 'France' ordered by the French Line from Chantiers de l'Atlantique, the keel for which was laid in October, 1957, and is now scheduled for completion in 1961.

"In Germany, the Deutsche Werft yard at Hamburg completed four more of ten Bureau Classed bulk carriers of 35,500 deadweight tons each. One of these was the 'Rio Grande', an iron ore carrier, while the other three were bauxite carriers. These were the 'Baumare', the 'Baune' and the 'Bauta'. All were built for Transworld Carriers, Inc., an affiliate of the Joshua Hendy interests. Four of these vessels had been finished in 1957. The first of three 36,200 ton tankers ordered by Esso Tankschiff Reederei, the 'Esso Berlin', was delivered in December. At the Bremen yard of A. G. Weser the 22,000 ton tankship 'Eurydice' was finished for Compania Maritima San Basilio. The H. C. Stulcken Sohn shipyard at Hamburg finished the last two of four duplicate 7,750 deadweight ton freighters for Flota Mercante Grancolombiana S. A., these being the 'Cartagena de Indias' and the 'Ciudad de Barranquilla'. The Weser-Bremerhaven shipyard completed 2 cargo ships to Bureau Class. These were the 'Continental Trader' and the 'Continental Carrier', built for the United and Arrow Steamship Companies of New York. These are part of an order for six freighters of 13,400 tons each. About 1,138,162 gross tons of merchant ships are now on order in Germany to be built to Bureau Class. This is an increase of 300,000 tons over the total last year. Of these vessels, some 273,874 tons should be completed this year.

"Currently under way to Bureau Class in Great Britain is 137,685 gross tons of shipping. Completed last year to Bureau requirements at the Atlantic Shipbuilding Company was the first of four 4,000 ton freighters

ordered for Banco Cubano Del Comercio. This was the 'Pinar del Rio'. The last of two 14,000 ton cargo ships, the 'Ermis', ordered by Compania Maritima Samsac Limitada was delivered by Bartram and Sons, Sunderland, England. The second of two duplicate cargo ships, the 'Lord Codrington', was finished by Scotts' shipyard in Scotland for N. G. Nicolaou of Monte Carlo. This yard also delivered the 19,700 ton oil tanker 'N. Georgios' to Libra Compania Naviera S. A.

"In Belgium, S. A. Cockerill-Ougree completed the cargo ships 'Moero', 'Mobeka' and 'Mohasi' for Compagnie Maritime Belge. These are Diesel powered vessels of 12,000 tons, part of an order for 8 vessels. There is now on order in Belgium to be built to Bureau Class 204,000 tons of new merchant vessels. All of these are for export except five modern cargo ships being constructed for Compagnie Maritime Belge.

"Completed to Bureau Class last year at the Kockums yard, Malmo, Sweden, for the Niarchos interests was the 40,750 ton tankship 'World Spirit'. Still on order to be built in Sweden to Bureau requirements is 407,520 gross tons of tankers, ranging in size from 39,350 up to 65,000 deadweight tons.

"In Holland, two tankers of 24,800 tons were constructed under Bureau supervision for Nederlandsche Norness Scheepvaart. These were the 'Naess Tiger', built at the Schelde shipyard in Flushing, and the 'Naess Lion', completed by Ned. Dok en Scheepsbouw. Finished at the Wilton-Fijenoord yard at Schiedam was the oil tanker 'Lorraine', a vessel of 26,050 tons, ordered by Société Française de Transports Pétroliers.

"In Spain, at the 'Elcano' shipyard the first two of four duplicate freighters were finished and Classed by the Bureau. These were the 'Ciudad de Pasto' and the 'Ciudad de Guayaquil', vessels of 7,500 tons.

"At the Astarsa shipyard in Argentina, there was completed to Bureau Class the oil tanker 'Esso Pampa' for Esso S.A.P.A. This is a vessel of 1,600 tons.

"One of the most outstanding events in maritime history, possibly eventually transcending in importance the Panama Canal and the Suez Canal, will shortly take place with the opening in the Spring of this year of the St. Lawrence Seaway. What far reaching effect this new deep water route to the Great Lakes will have upon American and Canadian flag shipping remains a matter of considerable speculation. Outside of a number of applications to the Maritime Administration for an operating subsidy, however, no American steamship operators are constructing new trans-oceanic vessels for this run. They contend it is not even remotely feasible for an operator to commence an unsubsidized service from the Lakes to overseas ports.

"On the other hand, several steamship companies in Europe are now constructing vessels specially designed to transit the St. Lawrence Seaway immediately upon its opening. Recently launched at the Chantiers de Provence shipyard in France for the huge Compagnie Générale Transatlantique was the 7,500 deadweight ton freighter 'Chicago' which, together with her sister ship the 'Cleveland', will soon start on the run between France and the Great Lakes. During winter, when navigation is closed by ice in the St. Lawrence, these Diesel driven ships will be operated in the West Indies trade. In order that they may operate as long as possible in the Great Lakes trade, the hulls will be ice strengthened and special protection is being provided for the propeller. Propelling machinery will be located at the after end of the vessels. In addition to

refrigerated cargo space, the vessels will have an upper 'tween deck of unusual height so that auto trucks may be carried. An 80-ton derrick will supplement the usual 5 and 10 ton derricks.

"Another company with long experience in the Great Lakes trade, utilizing the heretofor necessarily small restricted size freighters, is the Oranje Lines of Holland. They, too, have been preparing for the opening of the new Seaway. To be completed later this year, after an unfortunate, quite destructive fire at the shipbuilders yard, is the 'Princess Irene', a vessel of 8,526 tons. A sister ship, the 'Princess Margriet' will be finished in 1961. Both will have cargo cold storage facilities.

"Still another line constructing new vessels for the European-Great Lakes route is Manchester Liners Limited of England. Recently launched for them was the 'Manchester Faith', a closed shelter decker designed expressly for negotiating the St. Lawrence Seaway. It was built by Austin and Pickersgill Limited, Sunderland, England. This 6,000 ton vessel has three holds and 'tween decks with large hatches for the handling of dry cargo, and two deep tanks for the transportation of 250 tons of tallow and 120 tons of edible oils. Another vessel designed for the St. Lawrence Seaway service was launched in December for Manchester Liners Limited. This was the 'Manchester Miller', an 8,600 gross ton freighter built by Harland and Wolff, Limited, Belfast. Following a practice initiated in the United States some years ago, this vessel will have no funnel, exhaust fumes from the boilers being carried away through a pair of dummy derrick posts. The geared turbine propelling machinery is at the after end of the vessel, providing a sea speed of 16 knots. Another British flag company, Buries Markes Limited, will soon enter the Great Lakes-Mediterranean service with a new 7,100 ton, 16 knot, Diesel propelled freighter.

"An indication of increasing activity in the overseas trade on the Great Lakes is seen in the report that during the 1958 shipping season a total of 416 foreign flag ships called at Cleveland, Ohio, compared with 299 in 1957. In addition, some 286 Canadian ships called at Cleveland, an increase of 27 over the previous year.

"Chicago is served by twenty-six foreign flag lines. Nearly 400 sailings to and from the Port of Chicago were scheduled in 1958. According to the United States Army Corps of Engineers, Chicago is the world's greatest inland port. Traffic is in the neighborhood of 75 million tons annually, greater than any tidewater port in the United States except New York and the Delaware River. Overseas exports, however, are comparatively small, totaling 114,834 net tons in all categories in 1957. It was recently predicted that with the opening of the new Seaway, within six years Chicago could become the largest grain exporting port in the United States, with annual exports as high as 110 million bushels.

"Activity in the Great Lakes iron ore, coal and grain transportation trade during the restricted operating season when the Lakes are free of ice was greatly curtailed due to the business recession extending over most of 1958. As a result, the total tonnage moved was about 30 percent less than in 1957, aggregating about 111,000,000 tons. Iron ore transported was at the lowest level experienced since 1938, while the coal movement was the lowest since 1949. Some iron ore carriers were not put into service at all last year, remaining laid up from the 1957 operating season.

"Lately there have appeared in the newspapers and magazines of the

world many articles concerning the tremendous growth of the merchant fleets registered under the flags of Liberia and Panama. The inference has frequently been drawn that the ships of these fleets are sub-standard with respect to design, maintenance, safety equipment, etc. This has been a matter of considerable concern to the American Bureau of Shipping when it is recognized that approximately 57 percent by numbers and 64 percent by gross tonnage of the Liberian fleet, and 45 percent by numbers and 56 per cent by gross tonnage of the Panamanian fleet, are Classed with us. It can truthfully be said with respect to those ships Classed with the Bureau that any such implications are entirely unwarranted. From the standpoint of original design, maintenance and safety, the ships of these fleets compare most favorably with the fleets of any of the other maritime nations in which the Bureau has active participation.

"There is in some quarters a belief that the fleets of Liberian and Panamanian registry are comprised largely of older ships sold out from under the flags of original registry as they are replaced by newer and more modern ships. The following figures will indicate how completely unfounded are any such beliefs in so far as the ships in Class with the Bureau are concerned. Of the 572 Liberian ships totaling over 7,000,000 gross tons in Class with the Bureau, only 23, or about 4 percent, totaling 180,000 gross tons were built prior to the World War II construction program. Of the 249 Panamanian ships totaling 2,450,000 gross tons now in Class with the Bureau, only 32, or less than 13 percent, totaling 223,000 gross tons were prewar built. Of these ships, many were extensively altered and modernized to suit them for their present services as a part of the postwar reconversion program.

"In the Classed Liberian fleet, 263 totaling 4,650,000 gross tons, which is 66 percent of the total gross tonnage, and in the Classed Panamanian fleet 65 totaling 940,000 gross tons, which is 38 percent of the total gross tonnage, are less than 15 years old. Of the Liberian fleet, 209 totaling 3,850,000 gross tons, which is 55 percent of the total gross tonnage in Class, and of the Panamanian fleet 40 totaling 575,000 gross tons, which is 23½ percent of the total gross tonnage, are less than five years old.

"Since the ships built during the World War II construction programs still comprise a substantial segment of the fleets of many of the traditional maritime nations, nearly everyone associated with these ships is familiar with the fact that, in spite of the urgency with which they were needed, the standards of design and construction were not allowed to suffer. By and large, all of these ships were built to the then highest standards of the classification societies. As far as the postwar-built ships are concerned, all those in Class with the Bureau conform to the standards of our Rules, these being administered impartially irrespective of the flag of registry. These ships are representative of the most modern up-to-date ships to be found anywhere in the world.

"The Governments of Liberia and Panama have entrusted to the Bureau, among a number of other classification societies, not only the inspections customarily carried out to insure the maintenance necessary to continue the Classification of the vessels, but, also, the added inspections required to assure compliance with the provisions of the International Load Line and the Safety of Life at Sea Conventions to which these nations are signatory. The Bureau is fully aware of the responsibilities entrusted to its Surveyors. All inspections are being carried out in a

thoroughly diligent manner so as to satisfactorily discharge these responsibilities. In so far as the ships Classed with the Bureau are concerned, there can be no basis for considering these ships to be substandard.

"Total world shipbuilding production in 1958 is estimated at 7,500,000 gross tons of seagoing vessels—approximately the same as in 1957. While there have been some cancellations of shipbuilding orders in almost all countries during 1957 and 1958, total output in 1959 could approximate the totals achieved in 1958.

"The decline in world trade during the past eighteen months has had a considerable impact upon the merchant fleets of the world. A large number of tankers and freighters have continued to lay-up in the principal maritime nations. This constitutes a current surplus of tonnage. The situation has been aggravated by the big output of the shipyards, with the result that some new ships are still being laid up upon completion, particularly tankers. In some few cases brand new supersize tankers have gone immediately into the grain transportation trade. However, there has been, comparatively speaking, a dearth of new orders for shipbuilding establishments throughout the world. This, of course, will cut quickly into the big existing backlog of shipbuilding orders in some of the more fortunate countries.

"While the volume of world commerce continues at a depressed level, we have been able to maintain our current staff on surveys on existing vessels and on new shipbuilding, testing of materials, etc., in the steel mills, engine and boiler shops."

7. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA CONFÉDÉRATION SUISSE

Faisant usage de la possibilité qui lui est offerte par l'ordonnance du 5 août 1959 de la Cour internationale de Justice, la Suisse se prononce comme suit sur la requête de l'IMCO demandant à la Cour de lui donner un avis consultatif sur la composition du Comité de la sécurité maritime.

1. Conformément au droit suisse (loi fédérale sur la navigation maritime sous pavillon suisse du 23 septembre 1953, *Recueil officiel des lois et ordonnances de la Confédération suisse*, 1956, 1395 ss.), des navires ne peuvent être enregistrés dans le registre des navires suisses et arborer ainsi le pavillon suisse, que si d'une part la propriété du bâtiment dont il s'agit est entièrement en mains suisses et si d'autre part l'exploitation est dirigée de Suisse par une organisation suisse habilitée. Les propriétaires suisses doivent en plus être domiciliés en Suisse (pour les sociétés anonymes, cette disposition est applicable aux 3/4 des actionnaires). Les créanciers hypothécaires et autres créanciers ainsi que les armateurs doivent être des Suisses domiciliés en Suisse; les fonds investis dans les navires doivent être d'origine suisse.

L'équipage des navires suisses se compose aujourd'hui en *majorité de citoyens suisses. Une ordonnance prévue par la loi* prescrira dans quelle mesure les équipages des navires suisses devront comprendre des capitaines et marins suisses.

Avec ces dispositions extrêmement sévères sur la nationalité, la Suisse veut qu'il n'y ait, en prévision notamment d'une aggravation de la situation internationale, aucun doute sur le caractère intégralement suisse de ses navires.

2. Chaque État est en principe libre de formuler comme il l'entend son droit national maritime, à la condition toutefois que le droit international public conventionnel ou coutumier ne s'y oppose pas. Sous cette réserve il n'y a donc pas d'empêchement que le droit maritime d'autres États diffère de la réglementation suisse telle qu'elle vient d'être exposée. La restriction la plus importante imposée par le droit des gens réside dans la règle coutumière, actuellement formulée dans l'article 5 de la Convention sur la haute mer du 29 avril 1958, selon laquelle il doit exister « un lien substantiel entre l'État et le navire », à savoir que l'État doit « notamment exercer effectivement la juridiction et son contrôle dans les domaines technique, administratif et social, sur les navires battant son pavillon ».

3. Lors de l'examen de la question soumise à la Cour internationale de Justice, il convient de tenir compte du but que les États signataires ont recherché en adoptant la disposition contestée.

A leur avis, le Comité de la sécurité maritime, à qui incombe l'examen des problèmes de tout genre concernant la sécurité de la mer, devrait être composé uniquement de représentants d'États qui attachent aux problèmes de la sécurité maritime un intérêt important. Afin de tenir compte d'une manière si possible proportionnelle des genres différents d'intérêt, on distingua deux groupes: 8 sur les 14 membres du comité doivent appartenir à des États qui possèdent les flottes de commerce les plus importantes; les 6 autres membres doivent représenter des États qui ont d'autres intérêts, ainsi les pays dont les ressortissants entrent, en grand nombre, dans la composition des équipages ou qui sont intéressés au transport d'un grand nombre de passagers. Il ressort de cette confrontation que, dans le premier groupe, on a en vue la représentation des intérêts matériels sur les navires (propriété, hypothèques, etc.). Ces intérêts-là n'existent pas pour les États qui accordent également le droit de pavillon aux navires appartenant à des étrangers et se trouvant sous contrôle étranger.

On peut d'ailleurs constater que la Convention relative à la création d'une Organisation intergouvernementale consultative de la navigation maritime du 6 mars 1948 définit très diversement certains groupes d'États. La notion discutée « pays qui possèdent les flottes de commerce les plus importantes » n'est pas identique avec celles des:

1. pays qui sont le plus intéressés (ou: qui ont un intérêt notable [art. 17 *c*]) à fournir des services internationaux de navigation maritime (art. 17 *a*);

2. pays qui sont le plus intéressés (qui ont un intérêt notable [art. 17 *d*]) dans le commerce international maritime (art. 17 *b*);

3. pays qui ont un intérêt important dans les questions de sécurité maritime (art. 28);

4. pays dont les ressortissants entrent, en grand nombre, dans la composition des équipages (art. 28);

5. pays qui sont intéressés au transport d'un grand nombre de passagers de cabine et de pont (art. 28).

Chacune de ces désignations veut mettre en évidence un élément différent. Si les États signataires avaient été de l'avis qu'il suffit pour le groupe des 8 membres qu'une flotte importante arbore le pavillon de l'État intéressé, ils auraient adopté à la place de la formule « pays qui possèdent les flottes de commerce les plus importantes » celle de: « pays qui ont sous leur pavillon les flottes les plus importantes ». L'expression « possèdent » (anglais « own ») signifie qu'il ne suffit pas — en ce qui concerne l'éligibilité dans le groupe des huit membres du comité — que le navire arbore le pavillon de l'État intéressé et qu'il n'y ait ainsi qu'un « lien substantiel », mais qu'il faut en plus que le navire appartienne à cet

État ou à ses ressortissants. Une solution pourrait être trouvée dans l'application des critères de la protection diplomatique.

4. La Suisse souhaite que la Cour internationale de Justice se prononce sur la question soulevée par l'IMCO et qu'elle élimine ainsi l'imprécision qui existe actuellement dans l'interprétation de l'article 28.

Annexe :

Loi fédérale sur la navigation maritime sous pavillon suisse du 23 septembre 1953 (*Recueil officiel des lois et ordonnances de la Confédération suisse.* — RO. 1956, 1395 ss.).
[Non reproduite.]

8. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE ITALIENNE

1. Le Gouvernement de la République italienne a l'honneur de soumettre à la Cour internationale de Justice le présent mémoire, rédigé aux termes de l'article 66 du Statut, et avec référence à la lettre du 5 août 1959 du substitut chancelier de la Cour. Par cette lettre, Monsieur le chancelier a bien voulu informer le Gouvernement italien que Monsieur le Président de la Cour, avec son ordonnance en date du 5 août, a fixé le terme du 5 décembre 1959 pour la présentation d'exposés écrits sur la question concernant la requête d'avis consultatif que l'Organisation maritime consultative intergouvernementale lui a adressée par sa résolution du 19 janvier 1959.

Le présent mémoire se propose de faire connaître le point de vue du Gouvernement italien à ce sujet, et de contribuer ainsi à un examen objectif de la question.

2. La requête d'avis que l'Assemblée de l'I. M. C. O. a adressée à la Cour internationale de Justice par sa résolution du 19 janvier 1959 est d'une importance considérable dans le cadre de la structure fondamentale de l'Oganisation et de l'équilibre de ses organes. La requête dont la Cour a été saisie est bien simple, car elle est libellée dans les termes suivants:

> « Le Comité de la Sécurité maritime de l'Organisation intergouvernementale consultative de la navigation maritime, élu le 15 janvier 1959, a-t-il été établi conformément à la Convention portant création de l'organisme? »

La requête implique, toutefois, des problèmes délicats d'interprétation et d'application logique et systématique. Avant d'examiner les règles de l'article 28 de la Convention de Genève du 6 mars 1948, concernant la composition du Comité de la sécurité maritime, il est nécessaire de considérer les caractères et les fonctions du Comité. A cet effet il faut avoir égard notamment aux paragraphes *a* et *c* de l'article 29 de la Convention susdite.

Aux termes du paragraphe *a*,

> « Le Comité de la sécurité maritime doit examiner toutes les questions qui relèvent de la compétence de l'Organisation, telles que les aides à la navigation maritime, la construction et l'équipement des navires, les questions d'équipage dans la mesure où elles intéressent la sécurité, les règlements destinés à prévenir les abordages, la manipulation des cargaisons dangereuses, la réglementation de la sécurité en mer, les renseignements hydrographiques, les journaux de bord et les documents intéressant la navigation maritime, les enquêtes sur les accidents en mer, le sauvetage des biens et des personnes ainsi que toutes autres questions ayant un rapport direct avec la sécurité maritime. »

D'après le paragraphe *c*,

> « Compte tenu des dispositions de la partie XII, le Comité de la Sécurité maritime doit maintenir des rapports étroits avec les autres organismes intergouvernementaux qui s'occupent de transports et de communications, susceptibles d'aider l'Organisation à atteindre son but en augmentant la sécurité en mer et en facilitant, du point de vue de la sécurité et du sauvetage, la coordination des activités dans les domaines de la navigation maritime, de l'aviation, des télécommunications et de la météorologie. »

Il en résulte donc que deux ordres de compétence sont confiés au Comité: l'un d'un caractère de technique juridique; l'autre impliquant une coordination générale entre l'activité de l'I. M. C. O. et celle des autres institutions internationales, qui ont des tâches analogues ou concomitantes.

Ce rappel aux dispositions qui régissent les compétences du Comité de la sécurité maritime apparaît indispensable pour tirer au clair sa position dans la structure de l'I. M. C. O. et pour interpréter les modalités de sa composition.

Les organes essentiels de l'I. M. C. O. sont l'Assemblée, le Conseil et le Comité de la sécurité maritime. Mais, tandis que l'Assemblée ne se réunit que tous les deux ans et qu'elle exerce des fonctions *génériques*, et alors que la direction générale de l'Organisation revient au Conseil, le Comité de la sécurité maritime est l'organe éminemment technique, c'est-à-dire il est l'organe propulseur de l'activité de l'Organisation, celui qui a plus de trait aux techniques de la navigation maritime.

En effet, bien que, aux termes de l'article 22 *a* de la Convention, les recommandations et les rapports du Comité de la sécurité maritime sont soumis aux observations et aux recommandations du Conseil, c'est surtout au Comité que reviennent l'initiative et l'analyse dans le domaine technique.

Le Comité jouit d'une position d'autonomie, car il peut entretenir des rapports directs avec d'autres Organisations internationales, et il peut adopter lui-même les mesures nécessaires pour s'acquitter des tâches que la Convention lui a confiées. En outre, les fonctions du Comité ne se bornent pas à celles qui sont indiquées à l'article 29, mais elles s'étendent à toutes les tâches que la Convention et tout autre accord international lui attribuent pour ce qui concerne la sauvegarde de la vie humaine en mer.

Étant donné l'importance et la délicatesse des fonctions du Comité, on comprend aisément pourquoi la Convention a mis un soin tout à fait particulier pour établir les modalités de sa formation. Elle est réglée par l'article 28, qui prévoit ce qui suit:

> « Le Comité de la sécurité maritime se compose de quatorze membres élus par l'Assemblée parmi les Membres, Gouvernements des pays qui ont un intérêt important dans les questions de sécurité maritime. Huit au moins de ces pays doivent être ceux qui possèdent

les flottes de commerce les plus importantes; l'élection des autres doit assurer une représentation adéquate, d'une part, aux Membres, Gouvernements des autres pays qui ont un intérêt important dans les questions de sécurité maritime, tels que les pays dont les ressortissants entrent, en grand nombre, dans la composition des équipages ou qui sont intéressés au transport d'un grand nombre de passagers de cabine et de pont, et d'autre part, aux principales régions géographiques. »

3. Il convient de souligner que les membres du Comité doivent être choisis parmi les pays *qui ont un intérêt important dans les questions de sécurité maritime :* ce critère, qui est indiqué tout premier, est aussi le critère fondamental sur lequel les autres critères prévus au même article s'insèrent seulement comme une spécification et un complément. En d'autres termes, la qualité qu'on demande comme toute première, et à laquelle on peut ajouter les autres, sans en pouvoir faire abstraction, c'est cet intérêt prépondérant en matière de sécurité maritime.

Après avoir indiqué ce critère fondamental et général, l'article 28 indique les critères spécifiques qui fixent la répartition des sièges au sein du Comité, et à cet effet il prévoit que tout au moins huit de ces sièges doivent être confiés aux pays qui possèdent les marines marchandes les plus importantes, alors que, pour les six sièges qui restent, il énumère d'autres critères, sur lesquels il n'est pas ici nécessaire de s'attarder. Ce qu'il convient de remarquer est que tout critère spécifique présuppose le critère général susmentionné. Le concours de ce critère général est requis conjointement, car on ne saurait admettre que la seule présence d'un critère spécifique peut permettre de faire abstraction de vérifier si le critère général est rempli. En d'autres termes, il n'est pas suffisant qu'un État possède un tonnage grâce auquel sa marine est classée à la tête des flottes marchandes; mais il est nécessaire aussi qu'il ait un intérêt marquant en matière de sécurité maritime.

On parvient aisément à ce résultat sur la base de l'interprétation littérale de l'article 28, indépendamment des normales exigences d'une interprétation systématique et logique du texte en question.

En ce qui concerne l'interprétation littérale de l'acte constitutif d'une organisation internationale, il faut toujours rappeler ce que la Cour internationale de Justice a affirmé, d'une façon très nette, dans l'avis consultatif relatif à l'*Admission aux Nations Unies* (*C. I. J. Recueil 1950*, p. 8).

Nous croyons que le passage suivant demeure toujours fondamental étant donné qu'il se pose comme un principe inspirateur de la jurisprudence internationale, valable aussi pour le cas dont il est question :

« La Cour croit nécessaire de dire que le premier devoir d'un tribunal, appelé à interpréter et à appliquer les dispositions d'un traité, est de s'efforcer de donner effet, selon leur sens naturel et ordinaire, à ces dispositions prises dans leur contexte. Si les mots

pertinents, lorsqu'on leur attribue leur signification naturelle et ordinaire, ont un sens dans leur contexte, l'examen doit s'arrêter là. En revanche, si les mots, lorsqu'on leur attribue leur signification naturelle et ordinaire, sont équivoques ou conduisent à des résultats déraisonnables, c'est alors — et alors seulement — que la Cour doit rechercher par d'autres méthodes d'interprétation ce que les parties avaient en réalité dans l'esprit quand elles se sont servies des mots dont il s'agit. Comme l'a dit la Cour permanente dans l'affaire relative au Service postal polonais à Dantzig (C. P. J. I., Série B, n° 11, p. 39): « C'est un principe fondamental d'interprétation que les mots doivent être interprétés selon le sens qu'ils auraient normalement dans leur contexte, à moins que l'interprétation ainsi donnée ne conduise à des résultats déraisonnables ou absurdes. » »

4. On peut cependant considérer, *ad abundantiam*, ce qui suit.

Ces premières remarques sur les attributions du Comité dans le cadre institutionnel de l'I. M. C. O. nous permettent, en effet, de nous inspirer, pour l'interprétation de l'article 28, des éléments qu'on retrouve dans d'autres articles de la Convention, et surtout dans l'article 29. Il ne fait aucun doute, d'après la Convention, que la composition du Comité, telle qu'elle dérive de l'élection prévue aux articles 16 et 28, doit correspondre surtout à ses fonctions techniques. Et ce sont les États qui ont des intérêts prééminents en ce qui touche à la sécurité maritime, ceux qui, de préférence aux autres États, peuvent expliquer utilement ces fonctions.

Or, la sécurité maritime est un des buts fondamentaux de l'I. M. C. O., comme il est prévu à l'article 1 *a*, d'après lequel il revient à l'Organisation d'« *encourager l'adoption générale de normes aussi élevées que possible en ce qui concerne* la sécurité maritime ». Il ne fait aucun doute que l'interprétation des règles, qui ont pour objet la création d'un organe spécifique pour la sécurité maritime, doit s'inspirer du but essentiel que toutes les règles de la Convention relatives à la sécurité maritime doivent poursuivre.

Nous croyons que les arguments que nous venons d'exposer sont en parfaite conformité avec la méthode d'interprétation des actes constitutifs des institutions internationales, qui est suivie d'habitude, et qui a été tout dernièrement indiquée par un auteur de l'autorité de Charles De Visscher. En faisant l'analyse de la jurisprudence de la Cour internationale de Justice en matière d'interprétation des traités constitutifs d'Organisations internationales, il a remarqué que « la notion qui a été le mieux dégagée par nos décisions est celle du but, de l'objet, de la mission de l'Organisation elle-même et de ses organes en tant qu'elle transcende l'ordre de simple coordination ou juxtaposition entre États » (cf. C. DE VISSCHER, *L'interprétation judiciaire des traités d'organisation internationale*, dans la « Rivista di diritto internazionale », 1958, p. 187).

Cette notion a trouvé son expression la plus claire dans certains avis donnés par la Cour internationale de Justice. C'est précisément dans l'avis de 1949 dans la question des *Réparations des dommages*

subis au service des Nations Unies que la Cour a fait référence aux buts et aux fonctions des Nations Unies. Elle a déclaré que: « les droits et les devoirs d'une entité telle que l'organisation doivent dépendre des buts et des fonctions de celle-ci, énoncés ou impliqués par son acte constitutif et développés dans la pratique » (*C. I. J. Recueil 1949*, p. 180).

Analoguement, l'avis rendu par la Cour en 1954 relativement aux *Jugements du Tribunal administratif des Nations Unies* marque très bien l'idée que l'acte constitutif d'une organisation internationale doit être interprété dans le cadre de ses fins explicites (*C. I. J. Recueil 1954*, p. 53). Sur l'importance de cet avis, en tant qu'il est fondé seulement sur des éléments textuels et en tant qu'il n'utilise pas des éléments extra-textuels, cf. LAUTERPACHT, « De l'interprétation des traités », dans l'« Annuaire de l'Institut de droit international » (vol. 43, I, 1950, p. 395).

Or, la Convention de Genève qui a créé l'I. M. C. O. énonce précisément, comme nous l'avons dit plus haut, parmi les fins générales de l'organisation celle de la sécurité maritime.

6. Il est donc hors de doute que les organes de l'I. M. C. O. et, en ce cas, l'Assemblée, en faisant leur choix des États qui sont les plus qualifiés à être élus pour former un organe, doivent avoir en vue surtout les buts indiqués par la Convention. Dans le cas d'espèce, le but auquel il faut faire référence est précisément celui d'élever le niveau de la sécurité maritime. On comprend aisément alors pourquoi l'Assemblée, tout en faisant son choix dans la sphère des nations qui possèdent les marines marchandes les plus importantes, ait préféré élire d'autres États, au lieu du Libéria et du Panama.

On sait que le tonnage inscrit sous le pavillon du Panama et du Libéria est remarquable. Mais, en fait de pratique administrative et d'expérience technique en matière de sécurité de la navigation, ni leur contribution du passé, ni leur éventuelle contribution de l'avenir ne sont de nature à désigner ces États comme ayant des intérêts particulièrement importants pour la sécurité maritime.

Ces États ne possèdent pas en effet d'organes nationaux qui veillent à l'application des règles sur la sécurité maritime. Il est vrai que tous les deux ont adhéré à la Convention de Londres de 1948 sur la sauvegarde de la vie humaine en mer. Il n'en reste pas moins que, pour l'accomplissement des obligations prévues par cette Convention, ils sont obligés d'avoir recours aux services d'institutions étrangères, tels que le Lloyd's Register of Shipping et l'American Bureau of Shipping. Et, encore, ni le Libéria ni le Panama ne sont outillés de sorte à accomplir des enquêtes adéquates sur les sinistres maritimes. Ils ne possèdent non plus un outillage apte à l'entraînement des équipages, et de nature à leur donner l'autorité de certifier la capacité professionnelle y relative. D'où la nécessité pour eux de faire appel, presque complètement, aux marins étrangers.

Dans ces conditions, ni l'un ni l'autre de ces États ne sauraient prétendre à être pris en considération aux fins d'une sélection internationale, dont le but est précisément de désigner les États qui sont à même de donner à la sécurité maritime la contribution maximum. Il va sans dire que pour être en mesure de donner une contribution de ce genre, il faut avoir acquis une remarquable expérience, et que cette expérience ne saurait dériver que d'une large et longue activité directe dans le domaine spécifique dont il s'agit. Or, ce n'est pas certes le cas de Panama et de Libéria, qui sont, tous les deux, des pays où les activités maritimes sont presque *entièrement dans des mains étrangères.*

7. Mais, indépendamment des remarques qui précèdent et qui se basent sur des circonstances de fait incontestables, on doit constater, si l'on en vient au point central de l'étude juridique concernant l'interprétation de l'article 28 de la Convention, que l'Assemblée a exercé correctement ses pouvoirs.

L'article 28 prévoit l'*élection* des quatorze membres du Comité pour la sécurité maritime, et il ne fait aucun doute que par *élection* il faut entendre *choix*. Cela résulte d'une façon suffisamment claire des travaux préparatoires de la Conférence de Genève.

C'est ainsi que dans le projet élaboré par l'*United Maritime Consultative Council* (N. U. Conseil économique et social, doc. E/Conf. 4/1 du 29 mars 1947), on lit, à l'article 7, Sec. 1 (devenu ensuite l'art. 28 de la Convention) : « Le Comité de la Securité maritime se compose de quatorze Gouvernements contractants *choisis* par l'Assemblée... »

Ce texte a fait l'objet, ensuite, de l'examen du groupe de travail pour la sécurité maritime, qui a proposé un nouveau texte (N. U. Conseil économique et social, doc. E/Conf. 4/33 du 1er mars 1948), dans lequel on a gardé le mot *choisis*. Ce nouveau texte a été pris en considération par la Conférence maritime des Nations Unies, qui, tout en admettant la possibilité de quelques modifications de rédaction, n'a porté à la phrase susindiquée aucun changement, ni n'a formulé aucune critique.

C'était à la suite de la coordination de la rédaction de l'ensemble de l'article que le mot *choisis* a été remplacé par le mot *élus*. Mais, comme il s'agit d'un changement de rédaction, il n'y a aucun doute que la nouvelle expression a gardé une valeur équivalente à celle qu'elle a remplacée (cf. N. U. Conseil économique et social, doc. E/Conf. 4/SR revue du 12 avril 1948, p. 96).

Il est intéressant de remarquer que, dans les circonstances susindiquées, la délégation des États-Unis, dans son document E/Conf. 4/13 du 23 février 1948, n° 27, contenant des informations qui avaient été puisées au « Department of State Bulletin », a affirmé à la Conférence ce qui suit : « Le Comité de la sécurité maritime se composera de quatorze gouvernements contractants choisis par l'Assemblée parmi les nations que les questions de

sécurité maritime intéressent le plus, *huit d'entre eux doivent être choisis* parmi celles qui possèdent les marines de commerce les plus puissantes. »

C'est donc la délégation américaine elle-même qui a tiré au clair l'idée du choix.

8. Mais, même en faisant abstraction des travaux préparatoires, si l'on prend le mot *élection* dans sa signification normale, on doit admettre que la notion du choix est toujours inhérente à l'idée de l'élection. En tout état de cause, on ne saurait identifier l'idée d'élection avec une pure vérification statistique.

Si les Parties contractantes de la Convention avaient entendu statuer que la détermination des huit États aurait dû se référer tout simplement au classement des marines marchandes du monde d'après leur tonnage, ou bien ils l'auraient dit expressément, ou bien ils auraient employé un mot autre que celui d'*élection*, qui, en effet, comme nous venons de le démontrer, implique toujours un choix.

Il est à remarquer, en outre, que lorsqu'on a voulu se référer au tonnage, on l'a dit expressément: tel est le cas de l'article 60 de la Convention, à propos de son entrée en vigueur. Il s'ensuit que si, en ce cas, on n'a pas voulu mentionner le tonnage, cela signifie que l'élection, prévue à l'article 28, laisse à l'Assemblée une marge discrétionnaire de choix des huit États parmi ceux qui possèdent les marines marchandes les plus importantes.

Cela est d'autant plus vrai que le critère du tonnage est secondaire par rapport à celui de l'intérêt à la sécurité maritime, et doit s'accorder avec ce dernier.

On doit enfin apprécier la question dont il s'agit à la lumière des règles de la Convention de Genève qui concernent son interprétation.

D'un point de vue général, on ne saurait considérer, dans sa plénitude, le problème d'interprétation dont la Cour a été saisie sans se référer aux articles 55 et 56 de la Convention. Il est symptomatique à cet égard que la XV^me^ partie de la Convention, qui concerne le règlement des différends relatifs à l'interprétation et à l'application des règles de la Convention, s'intitule « Interprétations ». Sous cette rubrique, les rédacteurs de la Convention ont entendu précisément comprendre les différents systèmes par lesquels on peut atteindre la solution des problèmes d'interprétation.

Or, le premier système indiqué à l'article 55 est précisément l'intervention de l'Assemblée: « Tout différend sur toute question surgissant à propos de l'interprétation ou de l'application de la Convention est soumis à l'Assemblée pour règlement. »

Les discussions qui ont eu lieu au cours de la première Assemblée de l'I. M. C. O., et l'interprétation de l'article 28 qu'elle a donnée à une large majorité, sont là pour démontrer que l'Assemblée a affronté le problème d'interprétation, et ne l'a réglé qu'après y avoir réfléchi profondément.

Il est bien vrai que le vote, adopté par l'Assemblée, ne vaut pas, d'un point de vue formel, autant que l'activité que l'on peut lui déférer sur la base de l'article 55. Mais il n'en est pas moins vrai que ce vote a une grande valeur. Il est l'expression de ce pouvoir d'interprétation qui revient à un organe, par sa vocation même appelé à interpréter l'acte institutif de l'Organisation.

En effet, même indépendamment de l'article 55, il est un principe bien établi de droit international que toute Organisation internationale est compétente à interpréter son acte constitutif.

Comme on vient de le rappeler, l'Assemblée de l'I. M. C. O. s'est déjà prononcée sur la valeur et sur la portée du système d'élection prévu à l'article 28 de la Convention. Il n'est pas douteux, par conséquent, que la Cour, en exerçant le pouvoir d'appréciation juridique que la Convention elle-même lui confère à son article 56, doit tenir compte de cette attitude pour formuler une objective réponse à la requête d'avis dont elle a été saisie.

9. Sur la base des considérations qui précèdent, le Gouvernement de la République italienne a l'honneur de résumer son point de vue comme suit:

1. Le Comité de la Sécurité maritime de l'Organisation intergouvernementale consultative de la navigation maritime élu le 15 janvier 1959 a été correctement constitué en conformité des dispositions de la Convention relative à la création de l'Organisation susdite.

2. L'Assemblée de l'I. M. C. O., en choisissant les membres du Comité de la Sécurité maritime, a exercé ses pouvoirs d'une façon légitime.

9. LETTER FROM THE AMBASSADOR OF DENMARK TO THE NETHERLANDS

The Hague, December 4, 1959.
13 Sophialaan.

Monsieur le Greffier,

I have the honour to refer to your letter No. 30095 dated August 5, 1959, by which you were so kind as to inform me that by order of the same date, December 5, 1959, had been fixed as the time-limit within which written statements may be submitted by any State entitled to appear before the International Court regarding the request for an advisory opinion about the constitution of the Maritime Safety Committee of the IMCO.

Acting upon instructions from my Government I have the honour to let you know that the Danish Government have been informed about the contents of the Statement submitted by the British Government, and concur in the points of view set out therein.

Accept, etc.

(Signed) Wilhelm EICKHOFF,
Ambassador of Denmark.

10. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

I. *Introduction*

1. The present written statement is submitted by the Government of the United Kingdom to the International Court of Justice in accordance with Article 66 of the Statute of the Court and the communication GS 1/115/59 of August 5, 1959, from the Acting Registrar informing them that the President of the Court had, by Order of that date, fixed December 5, 1959, as the time-limit for the submission of written statements on the question submitted for an advisory opinion pursuant to the Resolution of the Inter-Governmental Maritime Consultative Organization of January 19, 1959.

2. The question reads as follows:

> "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on January 15, 1959, constituted in accordance with the Convention for the Establishment of the Organization?"

3. The election was held pursuant to Article 28 of the Convention, which is here set out for convenience of reference:

> "*(a)* The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas.
>
> *(b)* Members shall be elected for a term of four years and shall be eligible for re-election."

II. *History*

4. For the purpose of the election of members of the Maritime Safety Committee, as provided in Article 28 of the Convention, the Secretary-General of the Organization in a document dated January 13, 1959 (IMCO/A.1/Working Paper 5 and Addendum 1), set out a list of "Merchant fleets of the IMCO members according to the Lloyds Register of Shipping Statistical Tables 1958". Figures of "Registered Tons gross" were given for twenty-five countries; there were no figures in the Statistical Tables for six

members of the Organization. The only figures directly relevant to the present request are those for the countries with the largest registered gross tonnage in the 1958 Tables. They were as follows:

	Countries	Registered Tons gross
1.	U.S.A.	25,589,596
2.	Great Britain and Northern Ireland	20,285,776
3.	Liberia	10,078,778
4.	Norway	9,384,830
5.	Japan	5,465,442
6.	Italy	4,899,640
7.	Netherlands	4,599,788
8.	Panama	4,357,800
9.	France	4,337,935
10.	Germany	4,077,475

5. When the Assembly of the Organization considered the election of members of the Maritime Safety Committee at its Seventh Meeting on January 14, 1959, it had before it the above-mentioned list, Working Papers 6 and 7 submitted respectively by the United Kingdom and the United States delegations, and Working Papers 8 and 10 submitted by the delegation of Liberia. Working Paper 6 contained a draft resolution suggesting a procedure for the election of "the eight members of the Maritime Safety Committee which shall be the largest ship-owning nations". The proposal was to hold a separate vote for each of the eight places in the order in which the nations appeared in the Secretary-General's list and that those eight nations which first received a majority of votes in favour should be declared elected. In Working Paper 7, the United States delegation suggested postponement of the election until the Second Assembly, and the establishment of a Provisional Maritime Safety Committee open to all Members of the Organization. It pointed out that participation in the work of the provisional Maritime Safety Committee would demonstrate which countries actually take the most interest in maritime safety and that the delay would give time for the legal examination and resolution by agreement of differences of view that had arisen as to the interpretation of Article 28.

6. Working Paper 8, dated January 13, 1959, contained a draft resolution proposed by the delegation of Liberia. Among its *consideranda*, the draft resolution, after referring to Article 28 of the Convention, recited that "questions may be raised as to the interpretation of the expression 'ship-owning nations' and as to the nature of the evidence by reference to which the size of a ship-owning nation shall be determined". It also pointed out that no uniform rule prevails in the maritime laws of the Members of the

Organization as to the nature of the connexion between a vessel and the State under whose flag it sails. It further recited that "the difficulties of identifying the nationality of the beneficial owners of vessels owned by corporations are so great as to preclude the Assembly from adopting ownership by nationals as the criterion of a ship-owning nation". After a reference to Article 55 of the Convention, the draft resolution then proposed that the Assembly shall resolve:

> "That for the purposes of Article 28, the eight largest ship-owning nations shall be determined by reference to the figures for gross registered tonnage as they appear in the issue of Lloyd's Register of Shipping current on the date of election."

7. In Working Paper 10, dated January 14, 1959, the delegation of Liberia proposed certain amendments to the draft resolution in Working Paper 6 submitted by the United Kingdom. The effect of the proposed amendments would have been to retain the preamble, then to insert the automatic test for determination of "the eight largest ship-owning nations" proposed in Working Paper 8, identify them by name as the United States of America, the United Kingdom, Liberia, Norway, Japan, Italy, the Netherlands and Panama, provide for a separate vote on each in the order in which they appear in the Secretary-General's list (Working Paper 5) and:

> "That upon the receipt by the eight nations referred to above of a majority of votes, they shall be declared to have been elected as the largest ship-owning nations."

8. At the seventh meeting of the Assembly on January 14, 1959, the representative of the United Kingdom observed that Liberia and Panama were in a special position. He observed that, while they had a large registered tonnage they were not, at present, in a position to make any important contribution to maritime safety and could not properly be said to have "an important interest in maritime safety" within Article 28 of the Convention. He also maintained that they were not truly among the "largest ship-owning nations" because for that purpose vessels had really to belong to the countries in question, which was obviously not the case with Panama and Liberia. (Summary Record, pages 2-3.)

9. The representative of Liberia, on the other hand, maintained that the election under Article 28 was "not an election in the usual sense of the word" and that, once the eight nations had been determined in accordance with the criterion proposed by Liberia, the Assembly was bound to elect them. (Summary Record, pages 5-6.) He also said that the criterion of the nationality of the owners was inacceptable. (Summary Record, page 6.) He added that if the Liberian amendments to the United Kingdom draft resolution were not accepted, he would be prepared to submit to the Court

questions as to whether either "gross tonnage" or "the nationality of the ship-owners" should be the criterion and in both cases whether it would be legitimate for Liberia to be elected to the Maritime Safety Committee. (Summary Record, pages 6-7.)

10. The representative of Panama shared the opinion expressed by the representative of Liberia and said that his country's interests were similar to those of Liberia. (Summary Record, page 8.) The ensuing debate turned largely on the United States proposal for setting up a provisional Maritime Safety Committee (Working Paper 7) which was rejected by 14 votes to 12, with 2 abstentions.

11. At the end of the meeting, the representatives of the United States and Liberia jointly submitted amendments (Working Paper 11) to the United Kingdom proposal (Working Paper 6) which would have had the effect of declaring by resolution the members of the Maritime Safety Committee to be elected in accordance with Article 28 of the Convention as the eight largest ship-owning nations should be determined by reference to the figures for gross registered tonnage as they appear in the issue of Lloyd's Register of Shipping Statistical Tables current on the date of the election, i.e. the United States of America, the United Kingdom, Liberia, Norway, Japan, Italy, the Netherlands and Panama. In other words, if these amendments had been adopted there would have been no election in the ordinary sense of the word, but an automatic determination according to the figures in Lloyd's Register of Shipping Statistical Tables.

12. The debate on Working Papers 6 and 11 continued at the eighth meeting of the Assembly on January 15, 1959. It appears from the record that the central issue was whether Liberia and Panama should or should not automatically become members of the Maritime Safety Committee on the basis indicated in paragraph 11 above. However, the three parts of the amendments in Working Paper 11 were rejected by the Assembly by 17 votes to 11. The representative of Liberia thereupon proposed a reference to the Court for its opinion on two alternative criteria to be applied automatically under Article 28 and whether the Assembly was under a duty to elect Liberia and Panama to the Maritime Safety Committee. Pending receipt of the Court's opinion, the proposal suggested that the Assembly should establish an Interim Committee on Safety at Sea, open to all Members of the Organization. As the President of the Assembly pointed out (Summary Record, page 9) the effect of the Liberian proposal would have been to suspend the elections to the Maritime Safety Committee. In accordance with the President's ruling, the United Kingdom draft resolution (Working Paper 6) was then put to the vote. It was adopted by 18 votes to 9 with 1 abstention.

13. In accordance with the Resolution (IMCO/A.I/Resolution 9) adopted on January 15, 1959, the Assembly proceeded to vote for

the election of 8 countries to the Maritime Safety Committee as the largest ship-owning nations under Article 28. The vote was taken by roll-call. The results were as follows:

The United States of America was elected by 27 votes to none, with one abstention.

The United Kingdom of Great Britain and Northern Ireland was elected by 27 votes to none, with one abstention.

The vote on Liberia was 11 in favour, 14 against, with 3 abstentions, and Liberia was not elected.

Norway was elected by 25 votes to none, with 3 abstentions.

Japan was elected by 25 votes to none, with 3 abstentions.

Italy was elected by 25 votes to none, with 3 abstentions.

The Netherlands was elected by 25 votes to none, with 3 abstentions.

The vote on Panama was 9 in favour, 14 against, with 5 abstentions, and Panama was not elected.

France was elected by 23 votes to 2, with 3 abstentions.

The Federal Republic of Germany was elected by 23 votes to 2, with 3 abstentions.

14. Thus six members were elected by overwhelming majorities with no opposition. Two members, France and the Federal Republic of Germany, were elected by large majorities and opposition by only two representatives, namely those of Honduras and the United States, and the candidature of Liberia and Panama was rejected. In other words, in place of Liberia and Panama, which appear among the top eight in the Lloyd's Register of Shipping Statistical Tables, the next two in the Table, France and the Federal Republic, were elected. The representative of the United States explained that he had only opposed the election of France and the Federal Republic to be consistent with the legal principle which he had maintained. The representative of Liberia said that the elections were null and void "since Liberia and Panama had not been elected to membership of the Maritime Safety Committee to which they were legally entitled under Article 28 of the Convention" (Summary Record, p. 21).

15. At its 9th meeting on January 15, 1959, the Assembly elected the remaining six members of the Maritime Safety Committee which was then declared elected with the following membership:

United States of America
United Kingdom of Great Britain and Northern Ireland
Norway
Japan
Italy
Netherlands
France

Federal Republic of Germany
Argentina
Canada
Greece
Pakistan
Union of Soviet Socialist Republics
United Arab Republic

(Summary Record p. 6.) On the initiative of the representative of Liberia there was then some discussion about reference to the Court for an Advisory Opinion on the legal issues which had arisen in connexion with Article 28 of the Convention, but the matter was deferred until the next meeting of the Assembly.

16. At its 10th meeting on January 16, 1959, the Assembly resumed discussion of the election of members of the Maritime Safety Committee and the failure of the Assembly to elect Liberia and Panama. There was general agreement that the controversy arising out of the non-election of these two States should be the subject of a request for an Advisory Opinion, but there were differences of view as to the questions which should be put to the Court. The representative of the United Kingdom suggested the following questions:

> "(1) Must the 'eight largest ship-owning nations' be determined according to the tonnage on the national register?
>
> (2) If so, is the Assembly under a legal obligation to elect to the Maritime Safety Committee the governments of the nations having the largest registered tonnage?" (Summary Record, page 5.)

The representative of Liberia, however, did not think that this suggestion would cover all the questions originally raised by the Liberian delegation (see paragraphs 6 and 9 above). The Assembly decided to try to resolve these differences by asking its Legal Committee to formulate suitable questions.

17. The matter was not resolved by the Legal Committee, but, as a result of private talks, the delegations of Liberia, Panama and the United Kingdom were able to submit the joint draft resolution in Working Paper 20. At the eleventh meeting of the Assembly on January 19, 1959, the resolution was adopted with one abstention. The resolution refers to the differences of opinion that had arisen as to the interpretation of Article 28 *(a)* of the Convention and to Article 56 of the Convention. It then resolves to request an Advisory Opinion on the questions set out in paragraph 2 above and instructs the Secretary-General to place at the disposal of the Court the relevant records of the First Assembly and its Committees.

18. The first meeting of the Maritime Safety Committee, as constituted by the first Assembly of IMCO, was held on January 19, 1959, with the participation of all its members. The Maritime

Safety Committee then elected its officers, adopted provisional rules of procedure, took certain decisions relating to its initial work programme and decided to hold its next meeting in the second half of November, 1959. (IMCO/A.1/MSC/SR1 of January 19, 1959.)

III. *Interpretation of the Question*

19. It is clear from the Assembly's resolution of January 19, 1959, that the Court was intended, when answering the question submitted, to interpret it in the light of the differences of opinion which had arisen at the first session about the interpretation of Article 28 *(a)* and to take into account the course of events in the Assembly and its Committees.

20. The question as framed asks the Court whether the Maritime Safety Committee elected on January 15, 1959, is constituted in accordance with the Convention. The question, however, was not intended to impose a roving enquiry on the Court. In the first place, it relates directly to the interpretation of Article 28 *(a)*. Secondly, it arises out of and is directly dependent upon the non-election of Liberia and Panama. The essence of the question, however framed, is whether, upon a true interpretation of Article 28 *(a)*, the Assembly was under a legal obligation to elect Liberia and Panama to the Maritime Safety Committee, and, if so, whether the constitution of the Committee without them was contrary to the Convention.

21. Accordingly, the answer to the question depends on whether a definite criterion is to be applied automatically to determine the election of "the" eight "largest ship-owning nations" or whether in electing eight of the largest ship-owning nations the Assembly is left some measure of discretion. In accordance with the Advisory Opinion of the Court in the case concerning the "Admission of a State to the United Nations (Charter Article 4)" (*I.C.J. Reports 1947-1948*, p. 57 at p. 65) it is for the members in each case to exercise their judgment with complete liberty, within the scope of the conditions prescribed, and the competent organ, acting subject to those conditions, is entitled to reject the candidature of a particular State.

22. If, on the other hand, a State claims a legal right to be "elected", it must show two things. It must establish, first, that "election" is dependent on an automatic criterion, and, secondly, that the criterion applies to itself. In an attempt to meet these two conditions, it was suggested by the delegation of Liberia, in Working Paper 8, that the criterion for determining the eight "largest ship-owning nations" should be "the figures for gross registered tonnage as they appear in the issue of Lloyd's Register of Shipping current on the date of elections". A possible alternative, suggested by and declared unacceptable by the representative of Liberia was "the

nationality of the ship-owners" (IMCO Seventh Meeting, Summary Record, pages 6-7). In the submission of the Government of the United Kingdom, while these two suggested criteria no doubt should be taken into account in the course of elections to the Maritime Safety Committee, neither of them provides an automatic test entitling the eight members of IMCO so determined to be "elected" to the Committee.

IV. *The Significance of Lloyd's Register of Shipping Statistical Tables*

23. For the purpose of testing the claim made on the basis of Lloyd's Register of Shipping Statistical Tables, it is necessary to take into account the nature of those Tables. They are prepared by the Lloyd's Register of Shipping and published each year in its Annual Report. Lloyd's Register of Shipping is a non-governmental Society founded in the United Kingdom in 1760, and reconstituted in 1834. It was established for the purpose of obtaining for merchants, shipowners and insurance underwriters faithful and accurate classification of merchant shipping. The Society's Register Book, printed annually, contains names, dimensions, port of registry, flag identity and other useful particulars relating to all sea-going merchant ships of the world of 100 tons and upwards. It also includes particulars of classification of ships classed by the Society. The Society's classification covers a vast cross-section of the world's shipping. This classification is based upon reports from the Society's surveyors submitted to its Committee. Other information is obtained from the owners. The Register Book, based on such reports and information and particulars supplied by Governments, is prepared on the sole responsibility of the Society.

24. The tonnages set out in IMCO/AI/Working Paper 5 were taken from Table I "Merchant Fleets of the World" in Lloyd's Register Statistical Tables 1958. (Copy attached as Appendix A[1].) These Tables are based on the gross tonnage of ships entered in Lloyd's Register Book as printed and published in July and the tonnages are those registered in and flying the flag of the country concerned[2]. Thus a ship owned by a Panamanian company and registered in Liberia (a not uncommon phenomenon) is shown in the Table as Liberian. In other words, the basis of these Tables is

[1] Not reproduced. *[Note by the Registry.]*

[2] The explanatory footnote to the index to the Statistical Tables 1958 reads as follows:

"These Tables are based on the gross tonnage of ships entered in Lloyd's Register Book as printed and published in July, and do not include ships of less than 100 tons gross except in Tables 8 and 9.

Sailing ships and non-propelled craft are not included except in Tables 8, 9, 10 and 12.

Sailing ships fitted with auxiliary power are included in the figures indicated for Steamships or Motorships according to the type of the auxiliary engines."

not ownership by any country or person, but registration in a particular country.

25. In many countries, the right to register a ship is limited to nationals, and it is a matter of general knowledge that the bulk of the shipping on the register is owned both nominally and beneficially by nationals of the country in which the ships are registered. This is not true of all States. In some States registration is by one means or another made easy for foreign nationals. In such cases the links between a ship and its beneficial owners on the one hand and the country of registration on the other are, for the most part, extremely tenuous. They amount to little more than the registration of the ship and the façade of a subsidiary company, the real owner or the parent company being a national of another State. These are not matters which are recorded in any of the statistics compiled by Lloyd's Register of Shipping. Nevertheless, the broad facts are common knowledge and, in maritime circles, a great deal is known and generally accepted about their flags and the beneficial ownership of the ships registered under them. It is a matter on which the Members of the Organization are capable of forming a judgment for the purpose of determining which are the "largest ship-owning nations" when electing the members of the Maritime Safety Committee under Article 28 *(a)* of the Convention.

V. *Interpretation of Article 28* (a)

26. In the submission of the United Kingdom Government Article 28 *(a)* of the Convention should be interpreted in the light of the purposes of the Organization and of the Maritime Safety Committee. By Article 1 the purposes of the Organization include:

> "*(a)* to provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation".

27. By Article 29 *(a)* the Maritime Safety Committee has "the duty of considering any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log books and navigational records, marine casualty investigation, salvage and rescue and any other matters directly affecting maritime safety".

28. Although the Maritime Safety Committee has other duties, for present purposes it is sufficient to refer to those specified in Article 29 *(a)*. From these it is apparent that its duties cover a wide

and technical field, the fulfilment of which requires a high degree of expert technical knowledge. Since it is among the purposes of the Organization to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, it follows that the intention of the Convention is that the Maritime Safety Committee should be so composed as to give it the greatest possible chance of attaining the high standards which are the objective of the Organization.

29. Therefore, it is reasonable to assume that the provisions of Article 28 *(a)* are designed to secure the election to the Maritime Safety Committee of those Members which are likely to have the best qualifications for carrying out the duties of the Committee. It is unlikely that this objective would be achieved by any automatic test.

30. Accordingly, it is submitted that, in providing for the election of the fourteen members of the Maritime Safety Committee, the intention of Article 28 *(a)* was to leave a measure of judgment to the Assembly of the Organisation. In this way, the risks attendant on any automatic test would be avoided and the Assembly would, within the conditions laid down, be able to ensure that the best qualified Members were chosen for the Committee.

31. According to Article 28 *(a)*, all fourteen members are to be elected. The words used are "the Maritime Safety Committee shall consist of fourteen members elected by the Assembly". They are to be elected "from the Members, Governments of those nations having an important interest in maritime safety". An indication is then given of the two classes of Members from which they are to be elected, that is to say first the "largest ship-owning nations" and secondly "Governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers and of major geographical areas". It is clear from the text of Article 28 *(a)* that the process of election must apply to the choice of both these classes of Members.

32. In its natural and ordinary sense the word "elected" implies the exercise of a choice or judgment. It does not imply the application of an automatic test.

33. This interpretation of the word "elected" is confirmed by reference to standard English dictionaries. In the Shorter Oxford Dictionary, first edition, 1933, the word "election" is defined as:

> "The action of choosing for an office, dignity or position; usually by vote."
>
> "The choice by popular vote of members of a representative assembly e.g. the House of Commons."
>
> "The exercise of deliberate choice."

In the Universal Dictionary of the English Language edited by H. C. Wyld, 1932, "election" is defined as "choice, selection". In the Dictionary of English Law, 1959, edited by Earl Jowitt, late Lord High Chancellor of Great Britain, the word "election" is defined as "the right, and also the duty, and the act, of choosing".

34. To speak of an automatic "election" would be a contradiction in terms which would distort the natural meaning of the word "elected". It would be contrary to the jurisprudence of the Court to place such a strained meaning on the word "elected" unless there were very strong reasons for doing so. As the Court said in its Advisory Opinion on "Admission of a State to the United Nations (Charter, Article 4)", "to warrant an interpretation other than that which ensues from the natural meaning of the words, a decisive reason would be required which has not been established." (*I.C.J. Reports 1947-1948*, p. 57 at p. 63.)

35. As pointed out by the Court in the Ambatielos Case (Second Phase) (*I.C.J. Reports 1953*, p. 30), it has been said over and over again that words should be construed in their natural and ordinary meaning. This principle of interpretation was also expressly confirmed by the Court in its Opinion on "The Competence of the General Assembly for the Admission of a State to the United Nations" (*I.C.J. Reports 1950*, p. 4 at p. 8) when it quoted the following statement made by the Permanent Court in the case concerning the Polish Postal Service in Danzig (*P.C.I.J.*, Series B, No. II, p. 39):

> "It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd."

In the present case, to interpret the word "elected" in its natural and ordinary meaning so as to give a measure of choice to the Assembly would be reasonable. On the other hand, to say that Article 28 *(a)* provides an automatic test for the "election" of eight members of the Maritime Safety Committee would be likely to lead to unreasonable results. Therefore, there is no ground for departing from the interpretation of the word "elected" in its natural and ordinary meaning.

36. According to Article 28 *(a)*, the basic qualification for election to the Maritime Safety Committee is "an important interest in maritime safety". This qualification has to be fulfilled whether the State is seeking election as one of the "largest ship-owning nations" or as one of the "other nations". What amounts to an important interest in maritime safety for the purposes of Article 28 *(a)* is a matter for the judgment of the Assembly and in the last analysis for each Member of the Assembly to be expressed in the process of the election. It is submitted that the Assembly is not legally obliged

by Article 28 *(a)* to elect any particular eight Members merely on the ground that they have the largest total gross tonnage on their shipping register or by virtue of any other similar rigid test.

37. It may be presumed that the expression "the largest ship-owning nations" was used deliberately. It is at once obvious that this expression has no apparent clear-cut or technical meaning. Read literally it refers to ships owned by a nation, but everybody knows that nations, whether in the sense of countries or the population as a whole, do not own ships. Therefore, it is fair to assume that the expression was intended to have some meaning other than ownership by the country. Another meaning which might be attributed to the expression is ownership by States, but since comparatively few States own large fleets of merchant shipping it is apparent that this is not what was intended. Again it is suggested that registration by a State may be the test to be applied. However, as has been explained above, registration and ownership are two different things. If those who drafted the Convention had intended to lay down the test of registration, it would have been easy to use words more appropriate than "ship-owning nations". Indeed where it has been intended to refer to registered tonnage appropriate words have been used. Thus in the case of Article 60 of the Convention the test laid down in connexion with the entry into force of the Convention is the acceptance by seven States each having "a total tonnage of not less than 1,000,000 gross tons of shipping". The words used in Article 60 in connexion with entry into force where an automatic test is required correspond exactly with the language normally used in connexion with the registration of shipping, i. e. total gross tonnage. In Article 28 *(a)*, however, these words have been avoided and whatever may be the meaning of "ship-owning nations" it is clear that they do not refer to gross registered tonnage.

38. It is submitted that the intention of these words was to enable the Assembly in the process of election to look at the realities of the situation and to determine, according to its own judgment, whether or not candidates for election to the Maritime Safety Committee could properly be regarded as the "largest ship-owning nations" in a real and substantial sense. For this purpose, the Members of the Assembly have to rely on their own knowledge and their own judgment as to where the real or beneficial ownership lies and they are not bound by any automatic test, whether it be that of registration or, as has been tentatively suggested, that of the amount of shipping nominally owned by the nationals of a particular State. It is submitted that these words, while intended to guide the Assembly, were at the same time deliberately framed so as to enable the Assembly to deal with the matter on the basis of the true situation and the real interest in maritime safety of the State concerned.

VI. *Articles 55 and 56 of the Convention*

39. It is normal for the Court to take into account the decisions of an international organization in the interpretation of its own constitution. There have been several cases in which the Court has taken into account the practice of the organization concerned. Thus, in its Advisory Opinion in the *Injuries* Case, the Court said: "Practice—in particular the conclusion of conventions to which the Organization is a Party—has confirmed this character of the Organization...", that is to say an organization having international personality. (*I.C.J. Reports 1949*, p. 179.) In the same Opinion (at p. 180) the Court said "The rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice." Again, in its Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations*, the Court said: "The organs to which Article 4 entrusts the judgment of the Organization in matters of admission have consistently interpreted the text in the sense that the General Assembly can decide to admit only on the basis of a recommendation of the Security Council." (*I.C.J. Reports 1950*, p. 9.)

40. It is true that in the present case there has been only one election. Nevertheless, it is submitted that account should be taken of the deliberate adoption by the Assembly of rules of procedure for the election in Resolution 9 of January 19, 1959, that the election was carried out in accordance with that procedure and that each Member of the Maritime Safety Committee was elected by a very large majority of the Members of the Organization after a considerable debate in the Assembly on the interpretation and application of Article 28 *(a)*.

41. It is an elementary principle that the competent organs of an international organization have the right to interpret their constituent instruments so far as is necessary for the purpose of exercising their functions. In the case of the present Organization, the power of interpretation and application is expressly conferred on the Assembly. Article 55 provides "any question or dispute concerning the interpretation or application of the Convention shall be referred for settlement to the Assembly or shall be settled in such other manner as the parties to the dispute agree". This does not mean that the mere making or a decision by the Assembly is conclusive as to its own legality but it does, in the submission of the Government of the United Kingdom, reinforce the presumption in favour of the interpretation on which the Assembly has based its decision. Therefore, notwithstanding a reference to the Court in accordance with Article 56 of the Convention, it is submitted that due weight should be given to the decision taken deliberately by the

Assembly not to elect either Liberia or Panama to the Maritime Safety Committee.

VII. *Conclusions*

42. For the above reasons the Government of the United Kingdom submit

(1) that the Assembly of the Organization was not, by virtue of the provisions of Article 28 *(a)* of the Convention, under a legal obligation to "elect" either Liberia or Panama to the Maritime Safety Committee, and

(2) that the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization elected on January 15, 1959, was constituted in accordance with the Convention for the establishment of the Organization.

Appendix A

LLOYD'S REGISTER STATISTICAL TABLES 1958

MERCHANT FLEETS OF THE WORLD.—TABLE I

[Not reproduced]

11. WRITTEN STATEMENT OF THE GOVERNMENT OF THE KINGDOM OF NORWAY

1. By letter of August 5, 1959, the Acting Registrar of the International Court of Justice informed the Norwegian Government that the President of the Court had fixed December 5, 1959, as the time-limit for the submission of written statements on the question submitted for an advisory opinion by the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as IMCO) pursuant to the resolution adopted by the Organization's Assembly on January 19, 1959.

2. The request for an advisory opinion was made by IMCO in a letter of March 23, 1959, which was received in the Registry of the Court on March 25, 1959. The question raised reads as follows:

> "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on 15 January 1959, constituted in accordance with the Convention for the Establishment of the Organization?"

The Norwegian Government wishes to avail itself of the opportunity which it has under Article 66, paragraph 2, of the Court's Statute, to submit a written statement in regard to the question at issue.

3. In the course of the deliberations in IMCO's Assembly which resulted in the election, on the 15th January 1959, of Argentina, Canada, the Federal Republic of Germany, France, Great Britain, Greece, Italy, Japan, the Netherlands, Norway, Pakistan, the Soviet Union, the United Arab Republic and the United States to membership of the Maritime Safety Committee, it was contended that Liberia and Panama were entitled to membership and that the Committee would not be constituted in accordance with the IMCO Convention if they were not elected.

4. Inasmuch as there was advanced no other contention of a constitutional kind which would tend to invalidate the elections to the Maritime Safety Committee which actually took place, the Norwegian Government assumes that it is to the question of the correctness or incorrectness of this contention that the International Court is expected to address its scrutiny.

5. The arguments adduced in favour of this contention were based upon the words: "of which not less than eight shall be the largest ship-owning nations" in Article 28 *(a)* of the Convention, viewed in conjunction with the statistical table furnished by the Secretary General of the Organization (IMCO/A.1/Working Paper 5 and Add. 1, 13 January 1959) which showed Liberia and Panama to rank respectively as No. 3 and No. 8 on the list of

IMCO countries, enumerated in descending order according to the amounts of gross tonnage of ships flying their flags.

6. One argument in favour of the right to membership for Liberia and Panama in the Maritime Safety Committee is that the two countries by virtue of the mere fact of ranking among the first eight on the flag-tonnage list have a right to membership.

A subsidiary argument is that even if Article 28 *(a)* must be so construed as to leave some margin of discretion in regard to the election of the 8 members of the Maritime Safety Committee which shall be "the largest ship-owning nations", that margin was exceeded by the Assembly when it failed to elect Liberia and Panama to membership.

These two lines of arguments will in the following be dealt with *seriatim*.

7. In dealing with the argument which infers from the wording of Article 28 *(a)* an automatic right for the eight first countries on the flag-tonnage list to membership in the Maritime Safety Committee, it is necessary to consider *(a)* what procedure the Article provides for determining the composition of the group of eight countries which shall be "the largest ship-owning nations", and *(b)* the relevance in this connection of the above-mentioned flag-tonnage list.

8. In regard to the first of these two questions it is important to note that Article 28 *(a)* lays down that "the Maritime Safety Committee shall consist of fourteen Members *elected* by the Assembly". It is submitted that the use of the word "elected" is incompatible with the theory that it should be mandatory on the Assembly to give the eight seats reserved for the "largest ship-owning nations" to the eight countries at the top of the flag-tonnage list. An election involves by definition a choice between alternatives.

In this connection it is of interest to note that the word "elected" is used in Article 28 *(a)* not only in regard to the eight members of the Maritime Safety Committee "which shall be the largest ship-owning nations", but also in regard to the remaining 6 members which are to ensure adequate representation of other nations "with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas". It is clear that the criteria given in regard to the designation of these 6 members of the Maritime Safety Committee are not susceptible of an automatic application. And it would be strange, to say the least, if the word "elected" were used in one and the same sentence of the Convention in two fundamentally different senses.

9. The second question mentioned under point 7 above concerns the relevance for the application of the criterion: "not less than

eight shall be the largest ship-owning nations", of the statistical table furnished by the Secretary-General of the Organization in regard to the gross tonnage of ships flying the flags of the individual IMCO countries.

In this connection it should be sufficient to point out that Article 28 *(a)* uses the words: "largest ship-*owning* nations", which is something entirely different from the nations with the largest tonnage of ships *under their flags*. It is the interest evidenced by *ownership* of ships, rather than such interest which follows from the mere fact that a member State has a certain amount of tonnage *under its flag*, which is relevant for the application of this criterion.

On the basis of the above reasoning it is submitted that it is entirely unwarranted to infer, from the wording of Article 28 *(a)*, an automatic right for the eight first countries on the flag-tonnage list to membership in the Maritime Safety Committee.

10. It remains to be considered whether the subsidiary argument mentioned under point 6 above is valid and conclusive. If Article 28 *(a)* must be so construed as to leave some margin of discretion in regard to the election of the 8 members of the Maritime Safety Committee which shall be "the largest ship-owning nations", was that margin exceeded by the Assembly when it failed to elect Liberia and Panama to membership?

In answering this question it would seem natural to use the flag-tonnage list as a point of departure and to ascertain to what extent the tonnage figures given would have to be corrected in order to arrive at figures which would take due account of the relevant criteria in Article 28 *(a)*.

It is clear from what has been stated under point 8 that a first necessary correction would be to reduce the tonnage for each country by the amount of such tonnage which, although it is sailing under the flag of that country, is not owned by its nationals. This first correction of the figures on the flag-tonnage list would entail a rather considerable reduction of the figure attributed to Liberia.

11. A further necessary correction would be to add such amounts of the tonnage which is deducted under the principle enunciated above and which is owned by nationals of other IMCO countries, to the figures of such countries subject to such further corrections as are indicated below.

12. The thus corrected figures would have to be subjected to still further scrutiny. Up to the present stage the establishment of the list has been based merely upon the criterion that "not less than eight shall be the largest ship-owning nations". This however, is not the sole criterion for determining the eligibility of a government as one of the eight members mentioned first in Article 28 *(a)*. The Article also provides expressly that they shall be elected "from the Members, governments of those nations *having an important interest in maritime safety*".

The formulation of this proviso seems to permit two somewhat different constructions. One possible construction would seem to be that the words impose a cumulative condition for eligibility. If that is the proper construction, it would of course immediately be evident that the Assembly would have a very wide discretion in regard to the election of the eight members of the Maritime Safety Committee which are mentioned first in Article 28 *(a)*.

A possible alternative construction is that the words: "nations having [with] an important interest in maritime safety" are used merely to explain and clarify the specific requirements which are laid down in the paragraph for eligibility to the Maritime Safety Committee.

It must be clear, in any case, that it would be entirely unwarranted to construe Article 28 *(a)* as if the words "from the Members, governments of those nations having an important interest in maritime safety" were unwritten. It is significant in this respect that the authors of the convention should have found it necessary to use twice in the same paragraph the rather cumbrous expression concerning "an important interest in maritime safety", both where the paragraph specifies the conditions of eligibility to one of the 8 seats and again (it would seem redundantly) where it specifies the conditions of eligibility to the remaining 6 seats. The purpose of the repetition must be to stress the importance of this particular clause.

13. Irrespective of the interpretation which is chosen in regard to the clause which is considered under point 12, it should be clear that the flag-tonnage list, in order to make it serviceable for the purpose of Article 28 *(a)*, would have to be subjected to still further corrections. It cannot be assumed that all the tonnage owned by nationals of an IMCO country contributes to its interest in maritime safety. Corrections must be made particularily in regard to ships owned by juridical persons incorporated under the laws of one country, when the beneficial ownership in the ships pertains entirely or overwhelmingly to nationals of other countries. It would be unreasonable to include the tonnage of such ships in the tonnage figures of the countries of which such ship-owning corporations are nationals.

It is a matter of common knowledge that the overwhelming majority of ship-owning corporations, incorporated under the laws of Liberia and Panama, belong in this category, and it is submitted that IMCO's Assembly is entitled to take these facts into consideration when it is called upon to elect the members of the Maritime Safety Committee pursuant to the directives of Article 28 *(a)* of the IMCO Convention.

14. It follows from the considerations stated above that the listing of Liberia and Panama among the first eight on the statistical table furnished by the Secretary-General of IMCO did not by itself

and automatically entail a legal obligation for IMCO's Assembly to elect Liberia and/or Panama to the Maritime Safety Committee of the Organization.

It further follows that this flag-tonnage list, in order to become serviceable for the purpose of Article 28 *(a)* of the IMCO Convention, would have to be substantially corrected and that the determination of these corrections would to a large extent be subject to the discretionary judgement of the Assembly.

In the opinion of the Norwegian Government there is no justification for the contention that IMCO's Assembly in failing to elect Liberia and Panama to the Maritime Safety Committee, exceeded the margin of discretion which is given to it by Article 28 *(a)* of the IMCO Convention.

Conclusion

The Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization elected on January 15, 1959, *is* constituted in accordance with the Convention for the establishment of the Organization.

12. WRITTEN STATEMENT OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

1. The Netherlands Government desire to submit for the consideration of the International Court of Justice certain observations with regard to the question referred to the Court by the Assembly of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as IMCO) for an Advisory Opinion.

2. The question of law submitted to the Court concerns the election of the Maritime Safety Committee of the IMCO (hereinafter referred to as M.S.C.), which took place on 15th January 1959. Such election is governed by Article 28 of the Convention on the IMCO. It appears from the relevant records of the meetings of the Assembly that some delegations expressed doubts as to whether in proceeding to the election of the M.S.C. on 15th January 1959, the Assembly acted in accordance with the provision of Article 28 which prescribes that no less than eight of the members of the M.S.C. "shall be the largest ship-owning nations".

Other delegations held the opinion that the election was legally valid and that it was not necessary for the proper functioning of IMCO to seek an Advisory Opinion from the International Court of Justice; since one of the members however desired to obtain such an Opinion, they did not oppose this proposal.

3. Article 28 *(a)* of the IMCO Convention declares that:

> "The Maritime Safety Committee shall consist of fourteen members elected by the Assembly from the members, Governments of those nations having an important interest in maritime safety, of which no less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of members, Governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

4. Article 28 *(a)* may be usefully compared with Article 17 of the same Convention, which governs the composition of the Council, another organ of IMCO. Both Articles lay down certain qualifications which are required in order to be eligible for membership of the respective organs.

In both cases these qualifications are expressed in terms of "interests" which "nations" have. Article 17 mentions "interest in providing international shipping services" and "interest in international seaborne trade"; in Article 28 *(a)* the interest involved is the "interest in maritime safety".

Under Article 18 of the Convention twelve of the sixteen members of the Council are designated by the Council, whereas the other four members are designated by the Assembly. The members of the M.S.C. are all designated by the Assembly. It is obvious from the wording of the above-mentioned clauses that they embody directives addressed to the Council and the Assembly in respect of the fulfilment of their tasks to designate the members of the Council and of the M.S.C. The qualifications referred to in Articles 17 and 28 *(a)* of the Convention cannot, by their very nature, be applied automatically, and, accordingly, the organs called upon to determine which Governments of the IMCO member States are to be represented on the Council and the M.S.C. for a specific term enjoy a certain discretion in the application of the various criteria which the Convention indicates.

5. Whereas (apart from appendix I to the Convention) in respect of the qualification for membership of the Council ("interest in providing international shipping services" and "interest in international seaborne trade") the Convention does not give any further indications as to the *factors* which are relevant for the designation of the specific States to be represented in the Council, Article 28 *(a)* does give some more details about what should be taken into account in determining the "interest in maritime safety". Thus for eight members the fact of being a large ship-owning nation is mentioned in Article 28 *(a)* as indication of their interest in maritime safety, whereas for the other members other factors, such as being interested "in the supply of large numbers of crews" or "in the carriage of large numbers of berthed and unberthed passengers" have to be considered. The first group consists of nations capable of contributing largely to the development of maritime safety, while for the other group entirely different factors are applicable.

6. In particular, Article 28 *(a)* embodies a directive for the Assembly to the effect that among the fourteen members of the M.S.C. to be elected by the Assembly, all of which should qualify as having an important interest in maritime safety, "not less than eight shall be the largest ship-owning nations". In view of the discussion which took place in the Assembly before and after it proceeded to the election of the members of the M.S.C. on the 15th January 1959 the question now submitted to the Court may be framed as follows:

> "Did the Assembly, in electing the United States of America, the United Kingdom of Great Britain and Northern Ireland, Norway, Italy, the Netherlands, Japan, France and the Federal Republic of Germany, and in not electing Panama and Liberia, overstep the limits of the discretion left to it under Article 28 *(a)*?"

7. In order to judge whether or not a specific election took place in accordance with the Treaty provisions governing the election, it is obviously necessary to consider the various clauses and the

object of the Treaty as a whole. What is involved is the designation of particular States as members of an international organ. As the Court stated in its Advisory Opinion on the *Conditions of Admission of a State to Membership in the United Nations* (*I.C.J. Reports 1947-1948*, p. 64) "the political character of an organ cannot release it from the observance of treaty provisions ... when they constitute ... criteria for its judgment". On the other hand, the Court, in the same Advisory Opinion (*ibidem*, p. 63) remarked that such treaty provisions do not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down therein.

8. In the present case the liberty of appreciation left to the Assembly is limited in respect of eight members of the M.S.C. by the condition that they shall have an important interest in maritime safety as evidenced by their being the largest ship-owning nations. The application of these criteria is obviously not a matter of mathematical computation. Neither the fact of having "interest in maritime safety" nor the fact of being a "ship-owning nation" is in itself a factor which can be expressed in mere figures. Furthermore, in electing the members of the M.S.C., the Assembly has to apply these criteria in their inter-relationship.

9. In this connection, account must be taken of the task entrusted to the M.S.C. It appears from Articles 1 *(a)*, 29 and 30 of the IMCO Convention, in particular Article 29 *(a)*, that the M.S.C. is concerned with preponderantly *technical* matters relating to navigation. Accordingly, the requirement that eight of its members should represent the "largest ship-owning nations" clearly has the object of ensuring adequate representation of those States which, by virtue of their long-standing and extensive experience in such technical matters, are best capable of contributing to the elaboration of international standards in the field of maritime safety. The meaning of the term "ship-owning nation" must be determined in the light of this object of the establishment of the M.S.C. Consequently, the Assembly is acting in accordance with Article 28 *(a)* of the Convention when, in electing the eight members of the M.S.C. under the title of "largest ship-owning nations" it takes into account the factor of experience, since this factor can "reasonably and in good faith" be connected with the conditions imposed in Article 28 *(a)*.

10. Moreover, the term "ship-owning nation" is, even if taken out of its context, *not* a term suitable for legal analysis; it cannot be decomposed into elements which have any specific legal connotation. It obviously does not refer to States which are owners of vessels in the legal sense of the word. Neither does it refer to States in whose territories a large tonnage of vessels is registered, since mere registration does not necessarily guarantee the effective exercise of jurisdiction of the State concerned in technical and other matters over ships so registered. Neither does registration give any

indication of ownership. Furthermore, even the fact that the merchant fleet flying the flag of a particular State is owned by nationals of that State cannot in itself qualify that State as a "ship-owning nation". Registration and the right to fly the flag and national ownership of the vessels *may*, together with other factors, be relevant for the determination by the Assembly whether or not a State can be considered as a "ship-owning nation"; they do not either separately or jointly impress upon a State the quality required in order to be eligible for membership of the M.S.C., or to grant a State the right to claim such membership.

11. The overriding aspect involved in the designation of the eight members of the M.S.C. which represent "the largest ship-owning nations" is their competence in dealing with the matters entrusted to the M.S.C., based on the extent to which they control effectively the application of maritime safety devices in world shipping. In order to determine which States among the ship-owning nations are *the largest* ship-owning nations some basis of measurement must be applied. In this connection the amount of tonnage of ships registered in the various countries is a suitable starting-point, though by no means the decisive factor. In the course of the debates with reference to the election of the present M.S.C. on January 15, 1959, it was contended that registration is the *only* criterion for determining whether a State is eligible under the title of "largest ship-owning nation". As explained above this interpretation is based on a misconception with regard to the meaning of the word "ship-owning nation". Apart from that, this interpretation seems to be based on the erroneous assumption that each State is completely free to determine which ships are entitled to fly its flag and that, for the purpose of the composition of the M.S.C.—an international body—the size of a State's commercial fleet should be measured according to such sovereign determination by that State. As to the latter assumption it would seem to need no elaborate comment that a clause such as Article 28 of the IMCO Convention, which envisages a representation of States in an inter-governmental body in accordance with the relative weight of their interests, cannot be held to make the determination of such weight simply dependent upon the national legislation of the State concerned.

Furthermore, and quite apart from the application of Article 28 of the IMCO Convention, States are *not* completely free in fixing the conditions for the right to fly their flag. In this respect it is significant that Article 5 of the Convention on the High Seas, signed at Geneva 29th April, 1958, expressly states: "There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag." This provision, which forms part of a Convention adopted as

a codification of the rules of international law (cf. first paragraph of the preamble), clearly imposes limitations to the freedom of a State to determine which ships "belong" to that State.

It is incompatible with the existence of those limitations to consider, in the application of Article 28 of the IMCO Convention, the amount of tonnage registered in a State as a factor—let alone a decisive factor—for determining the eligibility of that State. No account can be taken of registration if such registration does not correspond to a genuine link between the ship and the State.

It appears from the statistical data that the gross tonnage of ships flying the flag of members of IMCO—in so far as relevant for the present purposes—is as follows[1]:

Countries	*Tons gross*
U.S.A.	25.589.596
Great Britain and Northern Ireland	20.285.776
Liberia	10.078.778
Norway	9.384.830
Japan	5.465.442
Italy	4.899.640
Netherlands	4.599.788
Panama	4.357.800
France	4.337.935
Germany	4.077.475

A brief comparison of the conditions, imposed by the national legislation of the member States of IMCO for the grant to ships of the right to fly its flag, shows that all the States at present members of the M.S.C. under the title of "largest ship-owning nations" require ownership by nationals as a condition for registration, whereas under the legislation of Panama and Liberia registration is open to all applicants irrespective of their nationality. In case of partnerships, associations and unincorporated companies, all members, or—in some countries—at least the majority of the members should possess the nationality of the State of registration according to the legislation of the first-mentioned group of States; no such condition is required under the legislation of Panama and Liberia.

As to ships owned by corporations there is more variety in the legislation of the group of States elected as members of the M.S.C. under the title of "largest ship-owning nations" with regard to the link between the corporation and the State concerned, imposed as a condition for registration of a ship owned by that corporation. Incorporation under the laws of the State concerned is not always expressly required. However, if there is no such condition—and, in some countries, even if there is—other conditions ensuring the

[1] Figures taken from IMCO/A.I/Working Paper 5 and Add. 1, 13 January 1959.

national character of the corporation are established, such as the nationality of the members of the board of directors or the seat of the real centre of business. Contrarywise, the legislations of Panama and Liberia do not contain either the requirement of incorporation under the laws of the State concerned or any condition as to the nationality of the management.

In view of the above it is submitted that the Assembly in proceeding on 15th January, 1959, to the election of the M.S.C. as presently constituted, acted in accordance with the IMCO Convention and the general rules of international law by *not* giving decisive weight—for the election of "the largest ship-owning nations" —to the amount of tonnage registered under the flags of Panama and Liberia. The legislations of the States presently elected under the title of "largest ship-owning nations" all require certain connecting factors between ships flying their flags and the State, which connecting factors are *not* required under the legislations of Panama and Liberia.

12. The observations of the Netherlands Government, as elaborated above, may be summarized as follows:

(a) Article 28 *(a)* of the IMCO Convention lays down as a condition for eligibility as member of the M.S.C. that the State concerned shall have an important interest in maritime safety. As regards eight of the fourteen members of the M.S.C. the important interest in maritime safety shall be evidenced by the fact that those members are the largest ship-owning nations.

(b) In applying Article 28 *(a)* the Assembly may take into account any factor which it is possible reasonably and in good faith to connect with the conditions embodied in that Article.

(c) The meaning of the term "ship-owning nation" in Article 28 *(a)* must be determined in connection with the general requirement of interest in maritime safety and the nature of the task entrusted to the M.S.C. Accordingly the term does not refer to the amount of tonnage registered under the flag of a particular State.

(d) In so far as the relative amount of tonnage registered in a State may be relevant for the designation of those eight States which, *being already qualified as ship-owning nations*, are the largest in this respect, no account can be taken of registration which, under the national legislation applicable thereto, does not correspond to a genuine link between the ship and the State.

For these reasons it is submitted by the Netherlands Government that the Assembly of IMCO, in proceeding on January 15, 1959, to the election of the M.S.C. as presently constituted, did not overstep the limits of the discretion left to it under Article 28 *(a)* of the IMCO Convention.

The Hague, December 4, 1959.

13. WRITTEN STATEMENT OF THE GOVERNMENT OF INDIA

Introductory

The first Assembly of the Inter-Governmental Maritime Consultative Organization, by Resolution dated 19th January, 1959, decided to submit to the International Court of Justice, with a request for an advisory opinion, the following question:

> "Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on 15th January, 1959, constituted in accordance with the Convention for the establishment of the Organization?"

The Government of India considers that the questions submitted to the International Court of Justice should be answered in the light of the international practices and through the reasoned application of the generally accepted principles of international law, for example, the principle that each State is free "to fix conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag" [1]. The other applicable principle is that vessels on the high seas are subject to no authority except to that of the State whose flag they fly, for the entire international legal system which the States have evolved to maintain law, order and safety on the high seas is predicated on the possession by each vessel of a connection with a State having a recognized maritime flag.

2. *The reason of nationality*

The basic reason for each country having its own national law concerning shipping is to be found in the practice of registration of ships. As Judge Sir Hersch Lauterpacht has observed in Oppenheim's International Law: "It is necessary for every State to register the names of all private vessels sailing under its flag, and it must make them bear their names so that every vessel may be identified from a distance." [2] The law of nations imposes the duty on every State having a maritime flag to provide by its own municipal laws the conditions to be fulfilled by those vessels which must need sail under its flag. The registration of ships and the need to fly the flag of the country where the ship is registered are considered essential for the maintenance of order on the open sea, since it is easy to enforce the rule that a vessel not sailing under the maritime flag of a State enjoys no protection whatsoever. It is now a well-established doctrine of international law that "freedom of navigation

[1] Article 5 of the Geneva Convention on the High Seas, 1958.

[2] Oppenheim, *International Law*, Vol. I, 8th edition, by H. Lauterpacht, 1955, p. 597.

on the open sea is freedom for such vessels only as sail under the flag of a State"[1]. In *Noim Molvan* vs. *Attorney-General for Palestine*[2], it has been clearly established that a vessel not sailing under the flag of any State has no right to protection just as a vessel sailing under the flags of two different States is deprived of any protection whatever. These rules now stand enshrined in Article 6 of the Geneva Convention on the High Seas (1958), which reads as follows:

"1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality."

Flying the national flag is, therefore, essential, and each State, whether it owns vessels or its nationals own them, finds it incumbent to prescribe rules relating to who can fly its flag, i.e. formulate the law relating to registration of ships, which duty, as stated before, is imposed on it by the law of nations.

In the light of the above, it is clearly established that each State is free to fix the conditions for granting its nationality and that the flag State has exclusive jurisdiction over these ships on the high seas.

3. *The IMCO Convention*

Article 28 *(a)* of the IMCO Convention provides that "the Maritime Safety Committee shall consist of fourteen members, elected by the Assembly having an important interest in maritime safety", of which:

(1) not less than eight shall be *the largest ship-owning nations;* and

(2) the remainder, i.e. six members, shall be elected so as to ensure adequate representation of members such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers and of major geographical areas.

It appears from the above that two tests were to be applied by the Assembly in electing the eight and six members respectively to the Maritime Safety Committee. In regard to the first category of members, the only test to be applied is which are the eight "largest ship-owning nations". It may be argued that as this provision does not really give any discretion, in respect of election, to the members of IMCO, the convention might have put down the

[1] Oppenheim, *International Law*, Vol. I, 8th edition, by H. Lauterpacht, 1955, p. 595.

[2] (1948) A.C. 351.

names of eight members as well. As it has not done so, it may be taken as an indication that the criterion depends on a variable factor; one State may be the "largest ship-owning" nation today but it may not continue to be one after a year or two. In view of the fact that members are to be elected for a term of four years and shall be eligible for re-election, the real intention of the framers of this provision appears to be that the largest ship-owning nations at the time of each election must be represented on the Safety Committee.

4. *The standards to be applied to ascertain the "largest ship-owning nations"*

It is clear from the provisions of Article 28 *(a)* that it does not lay down the standards to be applied for identifying that largest "ship-owning nations". This has given rise to a conflict of views; one view is that the criterion should be based on" Registered Tonnage", the other is that of "ownership by nationals". Under the former criterion, which in our view is the correct one, that nation is the largest ship-owning nation under whose flag the ships carry the largest tonnage, although such tonnage may not be owned by its own nationals.

5. *International law and the law of the flag*

In this connection an important question arises: What is the legal relationship between a ship and a State whose flag it flies? The proposition that every ship has a nationality implies the existence of a relationship between a vessel and a State of such distinctive closeness and intimacy that the latter may regard the vessel as belonging to itself rather than to any other country. "Thus the term nationality", points out Prof. C. C. Hyde, "seemingly has reference to a conclusion of law growing out of a set of facts which points to a special connection between vessel and State, and which somewhat resembles the connection between an individual and a State which serves to enable the latter to claim him as a national." He continues: "It is probably a sound proposition that a vessel registered under the laws of a State and possessed of a certificate of registry may be deemed in an international sense to belong to that State, and to justify it in giving it the privilege of flying its flag, regardless of the nationality of the owners of the ship." [1]

Thus, two factors are clearly brought out from what has been stated above: Firstly, every merchant ship has a nationality which indicates that the ship belongs to that particular State, and secondly, the nationality is evidenced by a certificate of registration and the flag of a nation which it flies regardless of the nationality of the owners of the ship. This view is also supported by Oppenheim in his learned treatise on international law:

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[1] Hyde, *International law chiefly as interpreted and applied by the United States*, Vol. I, 2nd ed. (1947), pp. 809-810.

> "Private vessels are considered as though they were floating portions of the flag State only in so far as they remain whilst on the open sea in principle under the exclusive jurisdiction and protection of the flag State. Thus, the birth of a child, a will or business contract made, or a crime committed on board ship, and the like, are considered as happening on the territory, and therefore under the territorial supremacy, of the flag State." [1]

The majority judgment in the *"Lotus"* Case gave explicit recognition to the above principles. While agreeing with the French Government's assertion of the existence of the principle that "the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas", the Court stated: "A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority upon it, and no other State may do so... By virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory." [2]

Similarly in *Katrantsios* vs. *Bulgaria* (1927), the Greco-Bulgarian Mixed Arbitral Tribunal held that the flag determines a vessel's nationality, unless the documents on board or the ship's register are to the opposite effect [3].

In this connection Oppenheim observes:

> "In the interest of order on the open sea, a vessel not sailing under the maritime flag of a State enjoys no protection whatever, for the freedom of navigation on the open sea is freedom for such vessels only as sail under the flag of a State. But a State is absolutely independent in framing the rules concerning the claim of vessels to its flag. *It can, in particular, authorize such vessels to sail under its flag as are the property of foreign subjects; but such foreign vessels sailing under its flag fall thereby under its jurisdiction.*" [4]

Admittedly the right of a State to grant its nationality carries with it the corresponding duty to exercise control and effective jurisdiction over those vessels flying its flag in the interests of order on the high seas. In exercising jurisdiction over its ships, the flag State is in a position, through its national laws and regulations, to enforce the rules of safety on sea, no other State either legally or *de facto* is in a position to enforce the rules of safety on sea.

It cannot be denied that as far as taxes are concerned, as well as employment conditions relating to crew and, above all, standards of maritime safety, it will be the law of the flag, irrespective of the ownership of the vessel, which would govern the position. Thus, if

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[1] Oppenheim's *International Law.* Edited by Prof. Lauterpacht, Vol. I (1955), p. 597.

[2] The case of the S.S. *"Lotus"*; P.C.I.J. Ser. A, No. 10, p. 25.

[3] 7 M.A.T. (1928), p. 42.

[4] Oppenheim, *International Law.* Edited by Sir H. Lauterpacht (Vol. I, 8th ed., 1955, p. 595).

Article 28 *(b)* of the I.M.C.O. Convention restricts membership of the Maritime Safety Committee to "nations having an important interest in maritime safety", it would certainly be the law of the flag that will govern the application of rules and regulations relating to maritime safety, and the test of nationality of the owner of the vessel will not be able to determine the proper law in this respect. In this connection, Article 3 of the Load Line Convention of 1930 [1] may be cited:

> "A ship is regarded as belonging to the country, if it is registered by the Government of that country."

Moreover, the approach of the Member States parties to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 [2], leaves no room for doubt that the law of the flag would determine the applicability of an international convention to a particular tonnage irrespective of ownership. The International Conference on Oil Pollution of the Sea held in Copenhagen in July 1959 appreciated the fact that the flags of convenience (Panama, Honduras and Liberia) along with the United States accounted for a large proportion of tanker tonnage which was outside the Convention [3]. It is common knowledge that a majority of the owners of tonnage coming under the category of "flag of convenience" reside outside Panama, Liberia and Honduras, and some of them are nationals of States that have ratified the Convention. Yet the Convention would not apply to this tonnage unless Panama, Liberia and Honduras ratify the same. This is indeed significant.

There are other considerations which make it incumbent that the real test in this regard is the law of the flag. Firstly, it is the law of the flag unconnected with the ownership of the vessel which provides the necessary authority to the master of a ship to deal with the cargo during the voyage and the manner in which he should execute it. In the case of *The August* [4], it was held that the master's authority to make the sale of cargo when driven into a port of distress was not governed by the law of England though the ship had taken on board cargo shipped by British subjects under English bills of lading. It was the law of Germany, i.e. the law of the flag, which applied. Secondly, the validity, interpretation and effect of a contract of affreightment, maritime insurance and property rights are governed by the law of the flag. On the other hand, the question may be raised as to which State will have the power to enforce rules of safety on the high seas, if the flag State is declared not to possess such a power. The answer will have to be that no other State has the power to do so.

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[1] L.N. T.S. 135, p. 328.
[2] U.K. Cmd. 9197 of 1954.
[3] *London Times*, 5th and 6th July, 1959.
[4] C.A. (1891), p. 328.

6. *The term "ship-owning" nations—a misnomer*

The use of the term "owning" is a misnomer and cannot be taken in its literal sense. Except in cases of States which have nationalized this industry, States do not own merchant ships. They exercise jurisdiction over them. If it is taken in its literal sense, the largest mercantile nations of the world, like the United States, may not have the first position. However, it has never been doubted that the United States is the largest ship-owning nation in the world. Therefore, the term has been used to convey the idea of jurisdiction and authority over the ship and not that of ownership of the ship in its literal sense. To ascertain the nationality of the ship, one has to look to the flag and the registry of the ship.

7. *Ownership by nationals as a criterion*

The present reference to the International Court of Justice arises out of claims by Liberia and Panama for membership of the Maritime Safety Committee. An argument against their claims has been advanced that although Liberia and Panama are among the eight largest ship-owning nations according to the quantity of gross tonnage registered in the name of those States, this criterion may be ignored because such tonnage was not owned by Panamanian and Liberian nationals.

8. *The object behind this provision*

It may be noted that the functions of the Maritime Safety Committee have been described in Article 29 *(a)*, which provides:

> "The Maritime Safety Committee shall have the duty of considering any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of cargoes, maritime safety procedures and requirements, hydrographic information, log books and navigational records, marine casualty investigation, salvage and rescue and any other matters directly affecting maritime safety."

Thus, the Committee will be concerned with formulating conventions laying down rules for safety at sea. It is to be mentioned that the Inter-Governmental Maritime Consultative Organization is an advisory and consultative body and the conventions prepared by it are not binding on the parties automatically. The member States have to ratify each of these conventions in accordance with their respective constitutional procedures. The vessels registered in Panama and Liberia and flying the flags of those States may be owned by citizens of the United States, Greece, United Kingdom or any other country in the world, but, as far as the standards of maritime safety are concerned, it will be the law of the flag State, irrespective of the ownership of the vessel or the ownership of the cargo, which would govern the position. The intention for the inclusion of Article 28 *(a)* seems to be to restrict membership of the

Maritime Safety Committee to nations having the power to enforce rules and regulations for maritime safety; this certainly could be done only under the law of the flag State and under no other. In this regard the test of nationality of the owner of the vessel will not be able to determine and enforce the proper law in this respect. In short, the gross registered tonnage indicated by the Lloyd's Register of Shipping would, from the point of view of maritime safety, record the correct position of the importance of Panama and Liberia. If a convention on maritime safety recommended by the Inter-Governmental Maritime Consultative Organization is not adopted by Panama and Liberia, because they have had no opportunity to discuss it during the formative stage in the Safety Committee, it would mean so much valuable tonnage excluded from the operation of important international conventions.

In addition, either from a practical point of view or from the point of view of existing practice, the criterion should be one of tonnage and the law of the flag; the commercial practice is by registration of tonnage, which determines the flag. For instance, the Lloyd's Register of Shipping—with reference to and following which the election took place on 15th January, 1959, except in the case of Liberia and Panama—was computed on the basis of registered gross tonnage only of the flag State, irrespective of ownership. The Government of India considers that the test of ownership, which could change at will of shareholders at a moment's notice, is totally unsuited with reference to the question of formulation and enforcement of maritime safety rules.

In conclusion, the Government of India considers that the economic success of ship-owning and ship operating business depends upon a reasonably reliable forecast of the laws and regulations which will apply to the ship. The law as to the nationality of the ship must be definitely known in advance. It cannot be left to the general decision of a judge or a tax officer or a crew welfare administrator while the voyage is going on or after the voyage is concluded. The proposition that authorities may look behind the law of the flag to try to discover facts about national control of sums of money invested in the ships leads to the splitting of the nationality of the ship, which is destructive of the economic, social and legal conduct of the shipping business. It will result in international legal anarchy and in the disruption of the legal order which has already been established and followed. In view of the above, the Government of India considers that the election which took place on 15th January 1959 to elect the members of the IMCO Maritime Safety Committee was not in accordance with the Convention for the establishment of the Organization and that Liberia and Panama should have been elected as two of the eight members in accordance with paragraph 1 of Article 28 *(a)* of the IMCO Convention.