

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

### Advisory Opinion of 8 June 1960

By resolution of 19 January 1959, transmitted to the Court and filed in the Registry on 25 March 1959, the Assembly of the Inter-Governmental Maritime Consultative Organization (IMCO) decided to request the Court 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 nine votes to five, the Court gave a negative answer to the question. The President and Judge Moreno Quintana appended to the Opinion their dissenting opinions. In its Opinion the Court first recalled the facts.

The Convention referred to in the Request for an Advisory Opinion established a body known as the Inter-Governmental Maritime Consultative Organization, which consisted of an Assembly, a Council and a Maritime Safety

Committee. This Committee was responsible for the consideration of any matter within the scope of the Organization directly affecting maritime safety. Its composition and the mode of designating its Members were governed by Article 28 (a) of the Convention which reads 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.”*

When the Assembly began its consideration of the election of Members of the Committee, it had before it a working

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paper setting out, in descending order of total gross registered tonnage, the names of Member States. On this list Liberia was third and Panama eighth. In electing the eight Members which had to be the largest ship-owning nations, however, the Assembly elected neither Liberia nor Panama. The debates having revealed a wide divergence of views as to the interpretation of Article 28 (a), the question whether the Committee had been constituted in accordance with that Article was, on the proposal of Liberia, submitted to the Court.

The Court then considered the answer which should be given to that question.

It had been contended before the Court that the Assembly was entitled to refuse to elect Liberia and Panama for the following reasons: the Assembly, it was argued, was vested with a discretionary power to determine which Members of the Organization had an important interest in maritime safety; in electing the eight largest ship-owning nations, it was empowered to exclude those that in its judgment did not have an important interest in maritime safety; its discretionary power extended also to the determination of which nations were or were not the largest ship-owning nations.

The Court observed that it had been sought to find in the expression "elected", which applied to all the Members of the Committee, a notion of choice, but it was of opinion that that contention placed in a subordinate position the specific provision of Article 28 (a) in relation to the eight largest ship-owning nations. The underlying principle of the Article was that those nations should be in preponderance on the Committee. Whichever were those nations, they were necessarily to be appointed to the Committee: that they each possessed an important interest in maritime safety and had been accepted as axiomatic. The debate which had taken place upon the drafts of the Article in 1946 in the United Maritime Consultative Council and in 1948 at the United Nations Maritime Conference confirmed that principle.

The Court next considered the meaning of the words "the largest ship-owning nations". If Article 28 (a) were construed as conferring upon the Assembly an authority enabling it to choose those nations uncontrolled by any objective test of any kind, the structure built into the Article to ensure their predominance on the Committee would collapse. It was apparent that some basis of measurement must be applied. The largest ship-owning nations were to be elected on the strength of their tonnage. The only question was in what sense Article 28 (a) contemplated that ships should be owned by or belong to them. Liberia and Panama had contended that the sole test was registered tonnage but certain other States had submitted that the proper interpretation of the Article required that ships should belong to nationals of the State whose flag they flew. A comparison of the texts of Articles 60 and 28 (a) of the Convention for the Establishment of IMCO and an examination of the practice followed by the Assembly in the implementation of Articles 17 (c) and 41 of that Convention persuaded the Court to the view that it was unlikely that when Article 28 (a) was drafted any criterion other than registered tonnage was contemplated. That criterion was moreover practical, certain and capable of easy application; it was that which was most consonant with international practice, maritime usage and other international maritime conventions. The conclusion reached by the Court was that the largest ship-owning nations were those having the largest registered ship tonnage.

The Court finally observed that its interpretation of Article 28 (a) was consistent with the general purpose of the Convention and the special functions of the Maritime Safety Committee. The Court could not subscribe to an interpretation which would empower the Assembly to refuse membership of the Committee to a State regardless of the fact that it ranked among the first eight in terms of registered tonnage. Consequently, in electing neither Liberia nor Panama, which were included among the eight, the Assembly had failed to comply with Article 28 (a) of the Convention.