DISSENTING OPINION OF JUDGE MORENO QUINTANA

[Translation]

To my great regret I am unable to agree in this case, either with the conclusion reached by the majority of my colleagues of the Court, or with the arguments on which it rests. My reasons are summarized hereafter.

In the form in which it has been put to the Court, the request for an Advisory Opinion relates essentially to the application of a legal text, in this case the interpretation given by the IMCO Assembly, when it elected the members of its Maritime Safety Committee, to Article 28, paragraph *(a)*, of the Convention for the establishment of the Organization. This provision lays down, for the election of the fourteen members of the said Maritime Safety Committee, one rule of general application and two rules of particular application. The general rule is a basic rule which characterizes the whole system, that according to which the members shall be elected "from the Members, governments of those nations having an important interest in maritime safety". The rules of particular application relate respectively to the election of not less than eight members which "shall be the largest ship-owning nations" and to the election of the six other members. It is clear that the basic rule, which is the principal rule, is to be applicable in all circumstances, whether as regards the election of the eight members being the largest ship-owning nations or as regards the six other members. All are to be elected in the light of the contribution which they can make to maritime safety. The particular rule relating to the largest ship-owning nations is logically subject to the observance of this principal rule. The latter is inseparable from the entire context of Article 28 *(a)* of the Convention.

That Convention confers upon the IMCO Assembly the necessary powers to elect all the members of its Maritime Safety Committee. It establishes it as the electoral body. Its task is not confined to the mere ascertaining of the largest ship-owning nations and the electing of the first eight members. It must classify them. Any other interpretation would confer upon the gross tonnage figures listed periodically in *Lloyd's Register of Shipping* a determining function not attributed to them by the Convention. Had such been the intention of the drafters of the Convention, they would not, in order to achieve this purpose, have selected the procedure of election, but that of *ex officio* nomination. A power of election is incompatible with a mandatory obligation to designate a particular country. The Assembly thus has a measure of appreciation sufficient to determine, according to its own criterion, which of those having an important interest in maritime safety are the largest ship-owning

nations. Being composed, as it is, of representatives of countries directly interested in maritime questions, it was in a position to appreciate which were the best qualified, from the technical viewpoint, to assume responsibility for maritime safety.

The reference to "the largest ship-owning nations" must therefore be regarded as having a practical significance in relation to international merchant shipping. The words do not necessarily refer to the gross tonnage figures for the different countries, which appear in the statistical tables published by a private international organization. The Convention contains no provision to that effect. The purpose of those tables is not to determine the importance of the merchant fleets of the various nations, but the registered gross tonnage of the ships sailing under their flag. The registration of shipping by an administrative authority is one thing, the ownership of a merchant fleet is another. The latter reflects an international economic reality which can be satisfactorily established only by the existence of a genuine link between the owner of a ship and the flag it flies. This is the doctrine expressed by Article 5 of the Convention on the High Seas which was signed at Geneva on 29 April 1958 by all the eighty-six States represented at the Conference that drew it up. This provision, by which international law establishes an obligation binding in national law, constitutes at the present time the *opinio juris gentium* on the matter.

A merchant fleet is not an artificial creation. It is a reality which corresponds to certain indispensable requirements of a national economy. As an aspect of the economic activity of a country, it governs the amount of the normal movement of its international trade. It cannot be used for other purposes, save only when a great development of commercial activity leads a country—as in the case of nations which are ultra-developed economically—to use its fleet industrially for the provision of services. The flag—that supreme emblem of sovereignty which international law authorizes ships to fly—must represent a country's degree of economic independence, not the interests of third parties or companies. This is a consequence of the very structure of world economy, of which merchant shipping is one of the principal supports.

For all these reasons, which the IMCO Assembly had full authority and opportunity to appreciate, I consider that the Maritime Safety Committee of the Organization, which was elected on 15 January 1959, was constituted in accordance with the Convention for the establishment of the Organization.

(Signed) Lucio M. MORENO QUINTANA.