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INTRODUCTION

1. Description of the study

This working document has been produced at the request of the Committee on Transport and Tourism by the Directorate-General for Research of the European Parliament, as part of its 1996 research programme. It is intended to give an overview of maritime transport in the context of the common transport policy and to demonstrate the general line of approach.

The first and most important aim of the common transport policy is to make it possible for people to move around freely. At the same time it has to be compatible with other policies, in particular those on environmental protection and the safety of persons and goods carried and those working in the sector. Shipowners must also be able to see a return on the capital they have invested. Maritime policy has to comply with a unique set of requirements arising from the fact that it operates at sea, besides those which apply to all other means of transport.

2. The sea and its legal and political implications

Historically, the sea, most of which extends beyond the jurisdiction of the coastal states - at least as regards the traditional instruments - has always been an important source of food (fish) and a means of direct communication with other countries (outside the territorial control of third countries). Direct military attacks can also be made from the sea. In addition, the sea-bed has long been a source of minerals, particularly oil.

Three notable characteristics of the sea are the many economic opportunities it affords, its strategic importance and its extraterritorial status. These factors account for the complexity of the maritime interests of individual states, as well as for the linkage that exists between all public policies relating to the sea, so that a policy on the sea can be envisaged, covering all official measures associated with the sea. Consequently, maritime transport policy has to combine the specific objectives of transport policy - which today is seen as mainly intermodal - with those of an overall policy on the sea. The interface between the various objectives is essentially the merchant fleets and the land-based infrastructure. In addition, maritime transport - to be compatible with other economic activities - must take account of environmental considerations and must not damage the fish stocks upon which the fishing industry depends.

In meeting its objectives, maritime transport policy must also take account of the third characteristic of the sea mentioned above, namely its extraterritorial status, and hence of the special framework of maritime law which has evolved over the centuries. Since the seventeenth century, in international law, the freedom principle has been a fundamental tenet of the Law of the Sea, established by political and legal usage and the needs of coastal states to extend their "authority" (1). In legal terms, the principles of freedom of the sea and sovereignty, as exercised by coastal states, apply within certain defined zones.
These two principles of the Law of the Sea, together with the need for legal certainty as regards the rules applicable to ships, have led to a system of registration whereby ships are allocated the flag of the state in question. Through this national registration, the state becomes responsible for the administrative control of the ship, imposing on shipowners and operators a series of financial and administrative obligations covering the vessel and its crew, as part of the merchant fleet of the country. In return, the ships enjoy consular and sometimes military protection from the country in which they are registered. The flag principle has been absorbed into international rules and regulations, and is now recognized as the reference point for all the rights and responsibilities of shipowners outside the territorial waters of Member States. This study will seek to demonstrate why the flag principle is no longer appropriate for a modern maritime transport policy.

3. The interrelationship between maritime policy and other public policies

The one area of public policy with which maritime policy has traditionally interacted and which has always been jealously guarded by individual states, even when they are prepared to transfer powers relating to the sea to international bodies, is authority, in other words responsibility for all actions taken outside the boundaries of a state and for the protection of its interests. This extends to any actions that require the use of military, diplomatic or economic means. These may involve participation by the merchant fleet, which can be responsible for a variety of strategic tasks:

- protecting communications with other parts of the territory of the state, or sovereign territory, that are not easily accessible by land;
- protecting trade with third countries, thus constituting an instrument for peace in international policy;
- acting as a kind of naval reserve, both in terms of ships and crews, in case of war.

These tasks provide a political justification for including the merchant fleet in the registration system, as indicated in the previous section.

Maritime policy has a bearing on those sectors of the economy where it is relevant in terms of input and output. For example, the profitability of the shipyards is directly dependent on orders for new ships and hence on developments in maritime transport. Since shipbuilding is, in turn, a major consumer of steel - one of the key industries in an economic system - there is an indirect link between the steel sector and developments in maritime transport. It therefore follows that a policy which encourages shipbuilding not only leads to an upgrading of the merchant fleet and a corresponding increase in competitiveness, but also benefits the associated industries, as well as the coastal areas where those industries are principally located.

Whether or not developments in maritime transport have a knock-on effect on the industries involved in the production process depends largely on the economic strength of the sectors whose products rely on maritime transport.

For the most part, these are the industrial and agricultural sectors whose volume of trade makes it convenient to use maritime rather than other forms of transport. The products themselves are bulky and are generally stored at their place of destination, which means that speed is not the overriding consideration. Carriage by sea, while
slower, is economically competitive with other transport modes. There are thus certain sectors of the economy - agriculture, steelmaking, chemicals and energy - which substantially affect developments in maritime transport. Since these sectors are themselves subject to specific policies and international agreements, the latter also ultimately have an influence on maritime transport. We have already seen how shipbuilding affects the coastal regions; industries connected with maritime transport such as handling, storage, insurance, catering and maintenance also have important repercussions for these areas. There is consequently an interrelationship between maritime transport and regional policy. It also follows that maritime transport, in economic terms, has significant employment implications, both direct and indirect, and that this creates a linkage with social policy.

The international nature of maritime transport also has major employment consequences for maritime personnel from the industrialized nations because of fierce competition from the developing countries. Some of these countries are able to carry out large-scale social, environmental and safety dumping activities because of a lack of control by their flag states. There is thus an interrelationship between maritime policy and international policy, which in this context also coincides with competition policy. In the maritime transport sector, however, competition policy is increasingly geared towards protecting the interests of domestic companies rather than deregulation. It aims to protect the competitiveness of the merchant fleet through trade agreements and conventions which, by setting high standards for safety and environmental protection (and requiring them to be respected), reduce environmental and safety dumping. The above is intended to illustrate the interrelationship between maritime policy and environmental and safety policies, which are important in their own right and not just as adjuncts of competition policy.

4. The international dimension in maritime policy

The sea and the activities connected with it have become matters of interest and an area for action for the whole international community, not only as regards controlling and limiting the rights of states over the sea, but also in determining how the freedom of the sea principle should be interpreted and applied. This change has come about as the result of a growing awareness on the part of the international community that the sea is a common good which must be preserved, and of the need to regulate maritime transport at international level.

There has therefore been a progressive widening of the scope of the conventions. To the right of sovereignty over the sea - the core element historically, and in terms of a legal framework - has been added a substantial body of international regulations. These, in turn, have led to the setting up of international organizations, among which the most important is the IMO (International Maritime Organization, a specialized agency of the United Nations). The IMO is now the prime source of technical regulations relating to the shipping industry.

The conventions on maritime safety and pollution are of particular importance, since both are aspects principally connected with international waters where official control is difficult. Furthermore, disasters at sea have repercussions which affect areas beyond the limits of national sovereignty, and areas of land or sea that may belong to more than one country. Such occurrences can lead to situations of potential conflict, and this has prompted the United Nations to draw up international conventions on environmental protection and the carriage of dangerous goods.
Similarly, a convention on safety has also been produced: firstly, because in technical terms, safety and environmental protection are closely linked; secondly, because the globalization of the transport market has created a need for a set of common safety standards in the interests of users; and finally, as we shall see, ratification of these conventions will prevent the emergence of so-called shadow flags, which distort competition and are a threat to the fleets of the industrialized countries.

In economic terms, the practice of establishing diplomatic agreements has been in operation in the shipping industry for some time. Generally, these are bilateral agreements which provide favourable conditions for ships of the contracting countries in transit between the two countries. Conferences are private agreements between shipping companies which nonetheless have political significance. Because they are self-regulating in terms of prices and capacity, they tend to restrict the markets in which they operate. In other sectors of production, many of these agreements would be regarded as an impediment to free competition, but in the context of maritime transport, they are seen as acceptable. International conventions are also either in force or being drawn up to cover this aspect of maritime transport.

5. The role of the Union

The progressive internationalization of maritime policy and the moves towards European integration have led to the decision to formulate a common maritime policy. Progress in this direction has been slow and has followed in the wake of the common transport policy, to which it is closely linked. But a more comprehensive maritime policy is now emerging.

It should be noted, first of all, that the European Community has responsibility for almost all the public policies mentioned in the previous sections. There is no policy on authority, however, which does not really qualify as a public policy but is rather the logical extension of a range of public policies relating to the sea. These include trade policy, for which the Community has responsibility. On the other hand, it is not responsible for military policy, which comes within the scope of the common foreign and security policy and is conducted at intergovernmental level.

A very important innovation for maritime transport policy would be the creation of a European register, but Member States are reluctant to agree to this because of the implications for individual states. Both the Commission and Parliament have already done considerable work on developing a European register. The different options will be examined in due course. For the time being, however, it should be pointed out that the difficulties encountered so far could be resolved if the various national policies on merchant shipping were to be integrated.

As things stand at present in the Community, maritime policy falls within the framework of the common transport policy. However, it has been suggested that all the public policies mentioned above might be combined in an overall maritime policy (6) centred on the maritime transport-shipbuilding industry-infrastructures axis, with a regional policy for coastal areas in the widest sense being dealt with separately. Vocational training and social policy would also be dealt with under the maritime transport policy (7), but would not be part of a more general policy on the sea.
The common transport policy has significant implications for maritime transport. The basic principle of sustainable mobility is the transposition into transport policy of sustainable development - originally formulated in an environmental context - with the aim of minimizing the environmental impact of transportation and ensuring that it is safe, efficient and of high quality. With these goals in mind, the principle of sustainable mobility is built around two main resulting concepts: intermodality and the internalization of external costs. The first is aimed at combining different modes of transport over a given route in order to optimize consumption, costs and time (i.e. to pursue the objectives of sustainable mobility). The second is aimed at avoiding any distortion of competition between the different means of transport in order to encourage intermodality. In other words, it seeks to prevent one form of transport which is more polluting - usually road transport - from being used more widely than another, since some costs (above all, the infrastructure costs) do not devolve on the user, but on the whole community.

The best way of complying with these principles would be for people and goods to be transported by the maritime mode where the overall cost is less than for other means of transport. The overall cost is the economic value of the price paid by users, together with the disadvantages suffered by the community as a result of the transportation process. To achieve this result, the companies concerned would have to be able to carry out the transhipment of persons and goods from one transport mode to another (combined transport) and to coordinate journeys and timetables (intermodality in the strictest sense). The public authorities would be responsible for regulatory measures, intervention and other tasks necessary for ensuring intermodality.

Maritime transport has certain features which enable it to meet the demands of sustainable mobility for long- and medium-distance journeys, and make it eminently suitable for short journeys between islands and areas that are difficult to reach by land. Short sea shipping services are particularly well adapted to this type of operation, and integrating them within an intermodal system on short routes would have a higher marginal benefit in terms of optimizing maritime transport use.

The concept of sustainable mobility also includes the safety of persons and goods carried by sea and protection of the environment. These are political issues which have an impact on industrial policy through the possible effects of technical standards on shipbuilding costs and on the free movement of persons, and because of the need for appropriately trained personnel (holding licences) to carry out particular professional tasks on board ships. The establishment of professional standards is also leading to a reduction in the number of jobs available for non-Community personnel on Union vessels.

These combined objectives of maritime transport also have implications in terms of port and high-technology infrastructure such as remote sensing systems.

On the basis of these considerations and given its specific responsibilities, the Community - if it is to respect the principle of subsidiarity - should begin by pursuing the aims of its own common transport policy so as to take account of other Community policies, in particular those on the trans-European networks and structural change, with special reference to regional and social policies and not least fisheries, which could be a decisive factor for its coastal areas. Industrial and research policies are also crucial to the aims of maritime policy.
The importance of integrating domestic policies should not be underestimated. It is also relevant as regards the second pillar: international action which gives added weight to the multilateral conventions on the environment and leads the regulations to be respected, regardless of flag, can only contribute to the success of a common maritime policy.

6. Preliminary ideas

On the basis of this brief outline of the complementary nature of the various policies and the Union's role in maritime transport, this study will endeavour to describe the situation and the problems involved, and to produce some answers to them.

The starting-point has to be the principle of freedom of navigation, which stems from the very nature of the sea and requires instruments for dealing with the problems involved that differ from those used for other modes of transport. Such instruments have to take account of worldwide competition (even though economic barriers may restrict individual geographic markets) and of the impossibility of restricting access by extra-Community operators, except to intra-Community short sea shipping.

Competition, being on a worldwide scale, is on the basis of "systems/country", rather than between shipowners. The Union's economic and administrative systems should therefore be geared towards developing a European merchant fleet. Such an objective is attainable, as well as perfectly compatible - not to say in synergy - with other development aims. Economic and administrative integration of this kind is also a demand imposed by the conduct of the Union's partners, whose protectionist stance - whether deliberate or not - requires more than just a passive response. In this context, one might take the example of the United States, which prohibited tankers with non-segregated ballast tanks from docking in American ports. Because the United States is a major player in world ocean trade, all the other countries had to alter their technical regulations accordingly.

Above and beyond the very real environmental concerns of the United States legislators, the law mentioned above distorted competition by creating a technical barrier in which the Community market mechanisms had no input. In the event, the response was an adjustment, but the existence of a more dynamic policy might well have enabled us to reach an agreement with our principal partner.

The above case shows how control is moving from the flag state to the port state. In the author's opinion, this transfer of power should be guided and supervised at international level in order to avoid a conflict of interests that is economic and political as well as legal in nature.

Increased international competition makes it equally necessary for Community and national (as well as regional) authorities to ensure that maritime transport is efficient, through enlightened fiscal arrangements, vocational training, infrastructure development and viable, globally planned transport systems. In point of fact, the major powers have always devoted particular attention to maritime transport, not only to ensure efficient means of transport for their economies, but also for reasons of political and military "authority".

The wide range of public policies which have a bearing on maritime transport, as described above, gives some idea of the complexity of the network within which
these policies interact. And since every policy has a corresponding series of competing and conflicting economic and moral interest groups, a common maritime policy concerns many sections of society, in particular the business world.

Maritime transport interacts with other activities that rely on marine resources: fisheries, exploitation of the sea-bed and tourism. It is particularly important for fisheries and tourism that maritime transport does not harm the marine environment, leaving fish stocks and nature intact. Even though maritime transport may cause relatively little pollution in terms of fuel consumption, a great deal of damage can be done by the discharge of waste or as the result of accidents. There is consequently a need for a policy on the marine environment that includes the exploitation of fish stocks and minerals, as well as the use of tourist, port and industrial sites along the coastline. This means that a policy on the sea also has to take account of the requirements of shipbuilding, which receives input from maritime transport and creates output not only in terms of value added, but also technological development. Finally, since the sea provides work for coastal populations and others, any policy on the sea will also have a social dimension.

Last but not least, the common maritime policy also has an international dimension that is extremely relevant, in view of the fact that maritime transport operates in an element which both unites and separates the various countries concerned.

The European Community is very much aware of the global nature of maritime policy and has commissioned many papers which adopt the right approach. This working document pursues the task of dealing with the specific problems associated with maritime transport within the framework of a policy on the sea.

CHAPTER ONE
MARITIME TRANSPORT AND THE MARITIME INDUSTRIES

1. Categories

Maritime transport can be categorized on the basis of two criteria: service and distance. The first covers bulk shipping and liner shipping for cargo, and passenger ferries and cruise ships for carrying passengers; the second covers deep sea and short sea shipping.

The different types of transport are distinct from one another. Bulk transport is generally organized within a free market and is labour-intensive rather than capital-intensive. Liner shipping, on the other hand, is organized in conferences, which for the most part are cartels that control the rates and market share of a specific liner shipping company or group of companies. In terms of production factors, liner shipping is highly capital-intensive in both tonnage and land-based infrastructures.

As regards the carriage of persons, passenger ferries are generally operated as a public service, whereas cruise ships are part of the tourism sector.

Deep sea transport involves long distances and is generally carried out by liner shipping services. Short sea shipping, on the other hand, covers maritime
transport services between the EU Member States, other states in the Baltic Sea and the Mediterranean, and Norway and Iceland. In other words, short sea shipping does not involve an ocean crossing and includes sea/river transport by coastal vessels to and from ports in the hinterland (8). A significant number of bulk, cruise and ferry services which technically fall under the service criterion qualify as short sea shipping.

2. World and Community fleets

In economic terms, the most important aspect of maritime transport is the tonnage of the merchant fleet. In fact, this figure generally covers all the material resources at the disposal of the sector, some of which are not necessarily in use either because ships are obsolete or in poor condition, or because of economic factors. While the aggregate figure for the world fleet, which ignores the flag/ownership distinction, provides us with a true picture of the situation, the disaggregated figures (or Community figures where applicable) are distorted by such a distinction.

Bearing these considerations in mind, the tonnage figures nevertheless provide some useful indications. At 31 December 1994, the world merchant fleet (9) amounted to 475 859 000 tonnes, reflecting a 13% growth over the previous 15 years. Various factors contributed to the increase. The world fleet, which had remained fairly stable between 1980 and 1982 (+1%), underwent a net laying-up of 5% from 1983 to 1988, and 16% growth between 1988 and 1994.

Also at 31 December 1994, the European merchant fleet (EU 12) amounted to 67 775 000 tonnes. At the same date, on the eve of their accession, the merchant fleets of Austria, Finland and Sweden amounted to 4 335 000 tonnes. The combined tonnage therefore totalled 72 090 000 tonnes, equal to 15% of the world fleet. Between 1980 and 1994, the Community fleet (EU 12), in contrast to the world fleet, declined by 44%. This dramatic fall is the outcome of a reduction of 51% between 1980 and 1990 and a 6% growth after 1991. In total, the EU 12 share of the world fleet fell from 28.7% in 1980 to 14.2% in 1994. Between 1992 and 1994, the EU 15 increased the size of its fleet by 6%. This reflects the greater dynamism of the merchant fleets of the Baltic countries, which does not compensate for the opposite tendency as regards the EU 12, however.

This downward trend in the Community fleet is confirmed by the figures dated 1 January 1995 for tonnage ordered or under construction for the Community fleet. This amounted to 10 674 200 tonnes, compared with a world total of 75 067 500 tonnes, and corresponded to a share of 14.22%, thus confirming the erosion of the Community's share of the world fleet. It should be noted that Norway's merchant fleet, which accounts for nearly all the non-Community part of the EEA fleet, measured just under 21.5 million tonnes at the end of 1994, which is equal to 30% of the Community fleet and 4.5% of the world fleet. Norway also had 1 131 000 tonnes of shipping on order or under construction. The figures confirm the relative dynamism of the Baltic fleets, compared with the other European countries.

However, the shipping companies of the Member States owned 34% of the world fleet in 1994, as opposed to 38% in 1985. The figure for controlled tonnage over the same period showed an increase of 12%, particularly in Greece, which controls 18% of the world fleet and is the largest shipowning nation in the world (10).
Dividing countries into groups according to tonnage provides further material for analysis. Table 2 (11) shows a significant drop of more than 20% in the market share of the industrialized countries, a small drop in that of the countries of Central and Eastern Europe, and a slight rise in that of the developing countries. Countries with open registers, on the other hand, have considerably increased their share of the market. There has also been a slight but real increase in the market share of the Asian countries: China and countries with dynamic economies have increased their share from 6% in 1981 to 11% in 1994. This is a sign not only of increased economic growth in these countries, but also of a redistribution of international trade flows and, consequently, of ocean trade.

The fact that the biggest increase (16%) has been in the fleets of countries with open registers cannot be attributed to changes in the real economy. Rather, it demonstrates the shortcomings in the maritime policies - in their widest sense, as described in the introduction - of the other countries when it comes to creating conditions of free and fair competition, or even securing the expected returns on their maritime investments (12).

It is interesting to see the distribution of different types of ship within the world merchant fleet (13). In 1993, tankers accounted for approximately one third of total tonnage, and bulk carriers for slightly less than one quarter. The huge increase in ships transporting chemicals between 1993 and 1994 (179.6%) has very little significance, since it only accounts for 2.5% of total tonnage.

Between 1973 and 1993, the world tanker fleet grew by 20%, with a 52% increase in tonnage between 1973 and 1978. This was followed by a drop of 32%. Trends in tonnage figures for tankers are directly linked to the severity of the oil crises and political and military relations between Israel and the Arab states. During the same period, 1973 to 1993, the volume of oil products carried by sea fell by 10%. In 1977, however, the best year for the transport of oil products, the increase over 1973 was only 12%, compared with an increase of 52% in the number of tankers (14). There was thus a drop of 26% in the relative rate of use in the four-year period from 1973 to 1977.

Two further factors to take into account before completing this picture of tonnage trends are laying-up and scrapping. The most recent figures published are for 1993 (15). Although 1993 saw a drop in tonnage laid up both in terms of ships - 427, compared with 445 during the previous year - and tonnage - 8.9 million tonnes of capacity, compared with 12.3 million - it should be noted that this included a substantial number of very large capacity tankers. Overall capacity (excluding vessels being fitted out) thus dropped by 3.4 million tonnes, in spite of a reduction in the number of tankers laid up amounting to over 100 000 tonnes. In other words, the sector - faced with stagnation - regained some of its operational flexibility by laying up the largest ships.

In 1993, the number of ships scrapped was the highest since 1987. It was the third consecutive year that breaking-up increased, with the scrapping of 390 ships amounting to 18.2 million tonnes of capacity. Of the 390 ships, 156 were tankers with a total capacity of 13.9 million tonnes, so there was an increase in the breaking-up of large-scale units. The People's Republic of China scrapped the most ships, followed by the Indian subcontinent.
The following points are intended to stimulate some thoughts on the subject:

- the world fleet appears to be moving towards ships of medium tonnage in order to be more flexible, possibly in response to greater variability in the market;
- the place occupied by the Community in the world fleet is shrinking. Future prospects relating to ships under construction or on order also confirm this trend. This decline, which is also affecting OECD members, does not appear to be the result solely of competition based on social and environmental dumping or lower safety standards in newly emerging countries, but is probably also due to gaps in the maritime policy of Member States. Norway, an industrialized country within the EEA, is showing considerable dynamism in this sector;
- the major part of Community-operated tonnage is affected by the "shadow flag" phenomenon: 33% of the world merchant fleet is registered under these flags, while the Community fleet has no more than a 15% share of the world fleet;
- the growing fleets of countries with open registers indicate that legislation in the Community countries, and in the industrialized nations generally, is inadequate to provide the conditions that investors expect, both in terms of competition and profit margins. It is only in times of political and military unrest, such as the Gulf War, that the need for protection from a modern navy leads to a return to the flags of the major naval powers.

3. Community maritime transport

We have already shown that the Community shipping sector, in terms of controlled tonnage, is one of the largest in the world, despite the fact that it is in a state of continuing decline. This is in marked contrast to the world fleet, which has shown an average growth rate of 6.5% over the last ten years. At the end of 1995, the Community shipping sector comprised 5630 companies and, at the end of the previous year, provided jobs for 153 309 people, of whom 127 579 were from within the Community and 25 730 from outside. Employment figures have also fallen, particularly as regards Community workers: in 1980, the number of Community workers employed was in the region of 250 000 (16).

The sector is undergoing a process of concentration, however, which will ensure that small businesses can find a niche for their particular specialization in the market, for example short sea shipping. This process of concentration, which should continue until the end of the century, is motivated by the need to provide users with an intermodal transport service. In this respect, there does appear to be some integration between the different modes of transport and auxiliary services in a synergic relationship to provide and sell services. However, a similar integration process does not appear to be taking place within the Community in the same way as in other parts of the world which are in direct competition with European maritime transport. The competitiveness of the latter is therefore being weakened.

Cruise services are thought to be a suitable area for development, provided there is a corresponding increase in family earnings, particularly the element devoted to spending on non-essential items.
In general, the Community provides high-quality, specialized maritime transport services. As a result, the companies concerned can be divided into four product categories: large-scale shipping companies with different types of ships providing specialized services, the industrial giants which organize the transportation of their own products (oil companies, for example), bulk carriers and charter companies.

4. **Short sea shipping**

Any discussion of maritime transport generally centres on ocean-going transport, but it is worth mentioning short sea shipping, which has already been the subject of a communication from the Commission (17) and a European Parliament resolution (18). In fact, it is an area of particular interest to some Member States, because of the possibilities it provides for linking up peripheral regions and islands. Since it is adapted to both sea and rivers, short sea shipping also constitutes an important link in the Community intermodal transport system (19), to which - despite being slower - it makes a significant contribution in terms of energy saving and environmental protection on routes where it has to compete with road and rail transport. Short sea shipping is also particularly relevant for Community enlargement in the Baltic region and, more generally, as regards trade with the countries of Central and Eastern Europe.

In spite of the advantages listed above, there is currently scarcely any integration between short sea shipping and other forms of transport, so competitiveness is reduced. The same does not apply, however, to **feeder line services**, whose share of the container line market has risen from 30% in 1982 to 43% in 1992 (20). Feeder services link minor ports with major ports where there is already a concentration of ocean-going container trade. Feeder services are mainly operated by liner shipping companies, and this enables running costs to be reduced. As a result, they are taking some trade away from road transport. It should be noted that among the feeder line operators, there are a number from outside the Community.

In the communication mentioned above, the Commission proposes a programme of measures for feeder services which is intended to make full use of their competitive potential, even outside their own sector. The programme includes action to improve the quality and efficiency of port services and infrastructures, as well to prepare them for enlargement. In particular, the programme recognizes the importance of research and development.

In its resolution referred to above, the European Parliament expressed approval of the programme and underlined the positive consequences which improvements in the feeder services sector could have for the entire transport system, as well as the shipbuilding industry.

5. **Community maritime transport problems**

It has been demonstrated how the Community’s global presence in maritime transport has declined, in spite of the size of the Community fleet. This has been caused by a loss of competitiveness, due not so much to poorer quality services, but rather to the higher costs associated with Community registers. This view has come to be generally accepted and forms the basis of the communication from the Commission (21). The solution proposed is primarily a Community initiative aimed at speeding up the process of harmonizing safety and environmental protection
measures through international conventions (a process that is already in progress), and at introducing more effective controls to ensure they are respected. This should lead to a reduction in environmental dumping, as practised by ships flying "shadow" flags.

We shall return to this topic in due course. At this point, it should be stressed that turning a blind eye to dumping will create massive costs in many areas. On the subject of personnel, the table contained in the Commission communication entitled Towards a New Maritime Strategy, from which we have quoted freely, gives some indication of the relationship between the cost of crews for ten different types of ship in two or three European countries and those of the most amenable flag of convenience. These differences in cost vary from a minimum of 4.6% to a maximum of 958.2%, and out of 42 cases examined only six were less than 100% and 12 less than 200%, with nine more than 400%.

Leaving aside the problems associated with distortion of competition, it can be seen how the effects of crew costs on total costs vary according to the age, category and financing of a vessel, as well as the tax system under which the shipowner is operating and his depreciation method. In the first year of operating a new vessel of relatively high capital cost, such as a container ship, the depreciation and interest costs are the most substantial (58% and 18% respectively), compared with 9% for crew. By the fifth year, the cost structure has changed to 31% for depreciation and 21% for loan interest, with crew accounting for 16% of total costs (22). For a less expensive ship, crew costs can account for as much as half the total cost for up to twelve years. Since provision for depreciation is not an actual expense but is tax deductible, it is clear that as the ship ages, personnel costs become critical.

This leads us to the problem of an ageing fleet. The average age of the Community fleet increased from 16 years in 1985 to 21 in 1994. During this period, the average age of the world merchant fleet increased from 14 to 17 years (23). The reasons for the increase lie in the fact that profits from maritime transport are lower than those in other industries, and this factor, together with reductions in freight rates in recent years, has led to ships being kept in commission for longer. Over the same period, economic growth in the Pacific, coupled with a corresponding increase in demand for maritime transport, led countries in the region to increase their fleets.

Community shipping is also affected by significant internal differences in cost. Fitting-out costs (not just crew costs, therefore) for a container vessel of 1500 TEU range from USD 473 040 in Greece to USD 1 485 650 in Italy, and are over a million dollars in eight countries (24). The costs mentioned here must be compared with the lower costs of the Asian fleets. However, it would be wrong to attribute the progressive decline of Community shipping solely to greater laxity in applying security and environmental protection measures, or to so-called social dumping by these countries. It could be that the former colonial powers, having for many years occupied cozy niches in the maritime transport sector, have lost the habit of constantly monitoring costs and ensuring that they remain competitive. In the same way, it seems likely that the principle of mandatory flags will come into operation, as foreshadowed in France. French refineries are obliged to use a certain number of ships flying that country's flag to transport oil (25).

The Commission is proposing (26) tax incentives based on the flag and the number of Community crew members. This approach, however, which will doubtless be
welcomed by operators, will not increase competitiveness. It will only serve to counteract the effects of the increased management costs on competition, and only for as long as the incentives themselves are in operation. **In the author’s opinion, the best course would be to make the shipping sector efficient once again by integrating it into an intermodal transport system**, in which maritime transport is, at present, sadly neglected. This would also encourage the concentration of businesses in groups to provide transport services that users want, and thereby create synergy between the different modes. Finance is a no less important issue. Leaving aside interest rates, which are linked to economic policy or state aid, credit facilities should be straightforward and transparent, as is patently not the case in many Community countries (27).

An important consideration from the point of view of maritime transport is the availability of **state aid**. In 1989 (28), the Commission put forward guidelines defining the conditions under which state aids to shipping may be considered compatible with the common market. The Commission has concluded that the current guidelines need to be revised ... [taking] into account developments in ... international competition, as well as the global trend towards the liberalization of trade in goods and services (29), and also the most recent case law. The new guidelines should ensure that there is support for the sector through measures that are in the common interest and transparent, and which do not distort competition between Member States.

### 6. Associated industries

Closely associated with maritime transport are the so-called **maritime industries**, which no longer consist solely of shipbuilding, offshore platforms and other types of marine equipment. They also embrace a wide range of production and services including shipping, port services and multimodal transport operators, as well as the marine resources and fishing industries and, of course, shipbuilding (30).

Safety, efficiency and compatibility with the environment are interdependent objectives for all these sectors. This section, however, will deal with specific problems affecting the shipbuilding industry, in particular the construction, repair and breaking-up of ships. In 1994, these activities occupied 120 000 workers in the AWES countries (31) - a dramatic drop compared to the 219 000 and 144 000 employed in 1985 and 1989 respectively. Of these 120 000, one fifth were employed in ship repair, where jobs are also in decline when compared with the 42 000 that existed in 1985.

The Community shipbuilding industry, which has a 20% share of the world shipbuilding market, is in the same situation as maritime transport. Production costs are higher than those in the Asian countries, and it has to contend with unfair competitive practices by some third countries. The Community industry scores highly as regards quality, but it still needs to improve productivity. The ship repair sector is in an even weaker state, as a result of having to compete with other European countries and Turkey, and being hampered by higher costs and unfavourable exchange rates.

In addition to the large companies, the shipbuilding industry also includes small and medium-sized businesses which specialize in building craft for fishing and sport.
The Commission envisages an increase in demand, for a number of reasons: the need both to renew the fleet and to comply with new safety standards; more trade in the Baltic and Mediterranean, and the scrapping of a significant number of North Sea oil rigs. On the negative side is the increase in the productive capacity of South Korea and, probably, of China, the countries of Central and Eastern Europe and the USA, all of which are making their presence felt on the international market.

The marine equipment sector, which produces items of a high technological standard, is immensely competitive. These items can account for 60 to 70% of the total value of a ship.

As regards industrial cooperation within the Union, a sector-specific round table is the **Maritime Industries Forum**. Since its establishment in 1992, the industry has made considerable progress in restructuring itself. Five major European companies have jointly created **Euroyard**, which has already produced **Eurofast** for short sea shipping, and **Eurocorvette** in the naval construction sector.

These achievements are the result of Community policy for promoting technological development in the maritime industries. Among the projects aimed particularly at the shipbuilding and marine equipment industries are **MUSYK** to provide support for ship production planning and control, **MARITIME** for the concurrent development and reuse of design data during the development and subsequent life cycle of a ship, and **MARVEL** to provide a global network for interlinking shipyards and their suppliers.

Competition in shipbuilding is a matter of particular concern for the Community institutions. On the one hand, they would like to see free and fair competition inside the Union, and on the other they wish to protect the European shipbuilding industry from unfair trade practices outside the Community. The most recent legislation on state aid was approved by the OECD in 1994.

7. **Sea ports**

Ports are land-based infrastructures serving maritime transport, where ships dock and persons and goods are loaded and unloaded, and where all navigational needs are catered for.

Ports are therefore the interface for maritime and other types of transport. As a result of intermodality and the vertical integration of companies in this sector, new management technology has been introduced which has changed the way they are run, as well as the legal status of the bodies responsible for running them. Today, ports are also facing increased competition and those that offer an inferior service are being marginalized.

Ports are also the interface for maritime transport and other sectors of the economy. The efficiency of local ports can have a considerable influence on the economies of coastal regions, which largely depend on the maritime industries. Where islands are concerned, ports provide a vital link with the rest of the world for goods and persons. The ports also fulfil a similar need in peripheral regions where land-based transport lacks suitable infrastructures (32).
The Commission has outlined its policy on ports in its communication entitled *The Development of Short Sea Shipping* (33), which has been criticized by the European Parliament for dealing with the general issue of ports within the narrow confines of this communication (34).

The main aim is to make ports more efficient through interoperability, with labour legislation to optimize the use of infrastructures and operators and provide more competitive services. These objectives would be pursued through technological development in the port sector, adaptation of competition rules to the needs of ports - with particular attention to state aid - and through structural policies and the trans-European networks.

Competition rules require there to be **transparency in port charges** between ports. This directly affects maritime transport costs: the Commission recommends that charges should be commensurate with the services provided, which should be clearly specified together with the overall price. The communication concentrates on short sea shipping, which is most affected by port charges even though the ships used in this type of transport have a higher draught than ocean-going shipping. Linked to transparency in charges is **transparency in state aid**, intended to prevent one port from charging less than its competitors. At the same time, there has to be free and fair competition between the different operators in the port area to avoid the monopolies that the Court of Justice has declared to be incompatible with Articles 90 and 86 of the Treaty (35).

As regards the **trans-European transport networks**, not one of the 14 priority projects relates to ports. However, they are recognized as being part of the network in the Community guidelines (36), which lay down certain conditions relating to which projects of common interest must comply (37):

- their **purpose** could be the provision of access by sea or river to ports, and/or internal and transport infrastructures inside the port area and linked to other elements of the network;
- their **aim** will be to make transhipment easier, to reduce traffic congestion on land and also the external costs generated by European transport; to strengthen economic and social cohesion, particularly by means of links with peripheral regions and islands; and to provide permanent access to the Baltic ports which, being situated at 60 degrees north, are generally blocked by ice during the winter;
- additional aims will be to **integrate traffic** either in a transport network or a multimodal chain, or to develop **non-polluting** means of transport.

8. **Employment**

In the maritime transport sector, jobs have traditionally been protected by a **national quota** system for crews on ships listed in the nautical register of a given country. This means that the country of registration must reserve a certain number of jobs for its own seafarers (38). However, those countries with open registers do not, in general, fix "national quotas". When ships transfer to these flags, therefore, the jobs of seafarers of the country transferred from are adversely affected. Unfortunately, it is not only employment that is threatened. The practice also leads to **social dumping** and less well qualified crews, since open registers recruit those willing to work for lower pay and levels of social security, which distorts competition.
Training standards are also laxer than those laid down in the international conventions, and this adversely affects safety and the environment.

The resultant fall in the number of jobs in the traditional seafaring countries means that young people are no longer interested in working in this sector. There is thus an erosion of maritime culture and, along with it, of technical know-how and knowledge of the sea. If countries are to develop effective maritime economic policies, such attributes need to be widely available in coastal regions.

There is consequently a shortage of maritime personnel, particularly in the industrialized countries, but the same situation could spread to other countries in the future. This is especially worrying when we consider that technological progress and a growing demand for a means of transport that is both safe and environmentally friendly are increasing the need for better qualified personnel.

This brings us to yet another link, this time between maritime transport policy and public policy on training. Seafarers fall into categories, according to occupation. In some instances, technical know-how may be required which cannot be used in other sectors of production, for example the duties performed by deckhands; others use the same technology as other sectors, such as for operating machinery. In both cases, training needs to be carried out in establishments designed specifically for seafarers. This is obvious in the case of deckhands, but it is equally important for other jobs carried out under the very particular conditions associated with the sea and navigation. A high level of training for seafarers is therefore crucial to the whole sector. Without real employment prospects, however, it would be of no use. Well-trained personnel are also essential to the existence of a competitive merchant fleet. Nevertheless, its competitiveness cannot be on the basis of low rates/poor service (39), but rather of optimizing rates for a high-quality service which is in keeping with the principles of a fair transport policy.

### TABLE 1 - WORLD AND COMMUNITY FLEETS

<table>
<thead>
<tr>
<th>Member States' Fleets by Flag 1000 GT</th>
<th>Existing Fleet As at 1 July</th>
</tr>
</thead>
<tbody>
<tr>
<td>BELGIUM</td>
<td>1810</td>
</tr>
<tr>
<td>DENMARK</td>
<td>5390</td>
</tr>
<tr>
<td>FRANCE</td>
<td>11925</td>
</tr>
<tr>
<td>GERMANY</td>
<td>8356</td>
</tr>
<tr>
<td>GREECE</td>
<td>39472</td>
</tr>
<tr>
<td>Member State</td>
<td>1992</td>
</tr>
<tr>
<td>-------------</td>
<td>------</td>
</tr>
<tr>
<td>Ireland</td>
<td>209</td>
</tr>
<tr>
<td>Italy</td>
<td>11096</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>-</td>
</tr>
<tr>
<td>Netherlands</td>
<td>5724</td>
</tr>
<tr>
<td>Portugal</td>
<td>1356</td>
</tr>
<tr>
<td>Spain</td>
<td>8112</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>27135</td>
</tr>
<tr>
<td>Total EC12</td>
<td>120585</td>
</tr>
<tr>
<td>Austria</td>
<td>-</td>
</tr>
<tr>
<td>Finland</td>
<td>-</td>
</tr>
<tr>
<td>Sweden</td>
<td>-</td>
</tr>
<tr>
<td>World Fleet</td>
<td>419911</td>
</tr>
<tr>
<td>% EC/World</td>
<td>28.7%</td>
</tr>
</tbody>
</table>

**Member States’ Fleets by Flag 1000 GT**

<table>
<thead>
<tr>
<th>Existing Fleet</th>
<th>As at 31 December</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>1993</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Mid-1981</th>
<th>End 1993</th>
<th>End 1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>214.7</td>
<td>51.0</td>
<td>140.1</td>
<td>30.6</td>
</tr>
<tr>
<td>30.3</td>
<td>7.2</td>
<td>32.7</td>
<td>7.1</td>
</tr>
</tbody>
</table>

Source: Lloyd's Register of Shipping

### TABLE 2 - CHANGES IN MAIN NATIONAL GROUPS' SHARE OF WORLD FLEET, 1981-1994

<table>
<thead>
<tr>
<th></th>
<th>Millions grt</th>
<th>% of world tonnage</th>
<th>Millions grt</th>
<th>% of world tonnage</th>
<th>Millions grt</th>
<th>% of world tonnage</th>
</tr>
</thead>
<tbody>
<tr>
<td>OECD countries 1</td>
<td>214.7</td>
<td>51.0</td>
<td>140.1</td>
<td>30.6</td>
<td>143.1</td>
<td>30.1</td>
</tr>
<tr>
<td>Central and Eastern European countries 2</td>
<td>30.3</td>
<td>7.2</td>
<td>32.7</td>
<td>7.1</td>
<td>30.7</td>
<td>6.5</td>
</tr>
</tbody>
</table>
Asian countries with dynamic economies 3

<table>
<thead>
<tr>
<th></th>
<th>17.8</th>
<th>4.2</th>
<th>35.1</th>
<th>7.7</th>
<th>36.7</th>
<th>7.7</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>7.7</td>
<td>1.8</td>
<td>14.9</td>
<td>3.3</td>
<td>15.8</td>
<td>3.3</td>
</tr>
<tr>
<td>Open registration countries 4</td>
<td>105.3</td>
<td>25.0</td>
<td>183.5</td>
<td>40.1</td>
<td>196.5</td>
<td>41.3</td>
</tr>
<tr>
<td>Countries with developing market economies</td>
<td>42.0</td>
<td>10.0</td>
<td>46.0</td>
<td>10.0</td>
<td>50.4</td>
<td>10.6</td>
</tr>
<tr>
<td>Others 5</td>
<td>3.1</td>
<td>0.7</td>
<td>5.5</td>
<td>1.2</td>
<td>2.7</td>
<td>0.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>420.8</td>
<td>100.0</td>
<td>457.9</td>
<td>100.0</td>
<td>475.9</td>
<td>100.0</td>
</tr>
</tbody>
</table>

1 Including the Great Lakes fleet and the US Reserve fleet.
2 Albania, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, Slovenia, Ukraine, Yugoslavia and the former USSR.
3 Republic of Korea, Hong Kong, Malaysia, Singapore, China (Taiwan), Thailand.
4 Antigua and Barbuda, Bahamas, Bermuda, Cayman Islands, Cyprus, Gibraltar, Honduras, Libya, Liberia, Malta, Mauritius, Oman, Panama, St Vincent and Vanuatu.
5 Cuba, Falkland Islands, Indonesia, Israel, North Korea, South Africa, Vietnam.


### CHAPTER TWO

**THE SEA AND NAVIGATION**

#### 1. The legal framework

Maritime transport is subject to, or at any rate influenced by, the rules of international, Community and domestic law governing:

- **freedom of navigation**: essentially in accordance with the rules of international law, but also those of domestic law, which establish the legal regime as it applies to the sea. The latter is divided into zones according to the rights of sovereignty exercised by the coastal states and the limits thereof. These rights apply in the legal treatment of ships, crews, persons and goods carried. The *flag principle* is of particular relevance as the point of contact between such rights and the applicable law.

- **legal relations**: essentially in accordance with the rules of national law which regulate the ownership and the rights *in rem* of ships engaged in maritime transport, the corporate and professional players involved that are specific to the sector (including the rules of labour law), as well as the obligations (mostly contractual) connected with maritime transport. This is therefore an area in which special rules of private law apply;

- **public authorities**, essentially in accordance with the rules of administrative law which determine the responsibilities of the authorities as regards navigation; the rules of public economic law, for example on credit and support for shipbuilding; and the rules of tax and social security law, which
ensure that provisions generally applying in other areas are adapted to the specific requirements of maritime transport;

- competition, essentially in accordance with international, Community and domestic law;
- technical and professional qualifications, as well as the conduct of seafarers, in the interests of the safety of persons and goods and environmental protection. These regulations have been developed at international, Community and national level mainly during the last 20 years or so.

This chapter deals with the first three of these areas.

2. The freedom of navigation principle (40)

During the seventeenth century, at the time when international law as we know it was being formulated, a dispute between the adherents of Mare clausum - most importantly the Englishman Selder - and those of Mare liberum, forcefully upheld by the Dutchman Grotius, finally ended in victory for the latter. The outcome was to have important consequences for maritime transport in the centuries that followed.

The principle espoused by Grotius informs the main tenets of the commercial and military (and, in times gone by, colonial) systems, which are primarily based on the idea that navigation consists of states being able to make use of the seas for their purposes. In international maritime law, this concept of navigation has been translated into a delineation of maritime zones in order to resolve the fundamental conflict of interests between maritime powers and coastal states. As a criterion, this is generally accepted, though there may be disagreement over boundaries. The continuation of this form of maritime dominion from 1600 until the present day has led, on the one hand, to the emergence and consolidation of the absolute and inviolable principle of freedom of the high seas and, on the other, to the sovereignty of coastal states over the adjacent zones, except in cases of hot pursuit or innocent passage.

The codification of international maritime law, which began during the second half of the last century (41), has largely upheld the precepts of customary law in regulating dominion over the sea. As part of this continuing process, the Third United Nations Conference on the Law of the Sea opened in Montego Bay in 1982, at a time when maritime interests were in a state of considerable flux. This was due both to the emergence of new states following decolonization and to new ways of exploiting the sea and its biological and mineral resources. The clash of interests was therefore no longer between maritime and coastal states, but between industrialized and non-industrialized countries, themselves subdivided into countries with highly developed coastal areas and those with restricted access to the sea. The newly established countries not yet equipped with effective navies, in trying to find outlets to the sea or seeking to exploit the marine resources over the widest possible offshore area, were not particularly disposed to uphold the inviolable principle of Mare liberum, which interfered with their ambitions to extend their economic zones out to sea. Nor did they have any particular interest in extending or maintaining the sovereign rights of the coastal states. In the search for new sources of wealth from the sea, the latter wished to delimit territorial waters on the basis of productiveness rather than extent. As a result, sovereign rights now have a more practical application, and this has altered what they stand for.
This new concept underlies the United Nations Convention on the Law of the Sea, also known as the Montego Bay Convention, which was signed on 10 December 1982 and entered into force on 16 November 1994. By the end of 1995 the convention had been signed by 158 countries, including the European Community and 14 Community countries - the exception being the United Kingdom - but not the USA. It has been ratified by 82 countries. On 13 June 1996, only five Community countries had ratified. These were Germany, Greece, Italy, Austria and Sweden.

The Montego Bay Convention regulates the various uses of the sea, of which those related to the exploitation of biological and mineral resources are probably the most politically sensitive. With regard to freedom of navigation, the major difficulty is delimiting the territorial sea and contiguous zones.

International law in the seventeenth century fixed the limit at three nautical miles, according to the principle of usque ad arma ruant, in other words on the basis of the range, at the time, of a cannon-shot from the shore. It amounted to the recognition of military might as a criterion for defining sovereignty. This definition is still recognized by all states, though many have tried to extend their sovereignty. Nor was the Montego Bay Convention any more successful in eliciting agreement on extending territorial waters. Article 3 therefore contains the following compromise: that every state has the right to extend its own territorial sea to up to 12 nautical miles from the baseline. This compromise is not watertight in so far as the rule cannot be imposed on states that were not party to the convention, among them the United States, and which are claiming freedom of navigation up to the three-mile limit.

The contiguous zone was introduced into international law through the 1958 Geneva Convention. Article 24 defines the contiguous zone as a zone of the high seas contiguous to its territorial sea, in which the coastal state may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations. Article 33 extended the contiguous zone from 12 to 24 miles, as a logical consequence of extending the territorial sea to the same distance. Inside the contiguous zone, the authorities of the coastal state have the power to ensure that there is no infringement of its laws, as mentioned above. Provision is made for punishing infringements of the above laws and regulations committed within its territory or territorial sea. In other words, inside this maritime zone, and within the limits indicated above, the laws of the coastal state override those of the flag state.

Outside the contiguous zone, and leaving aside the other maritime zones over which the coastal state has rights that do not interfere with navigation, there is the high sea, where certain activities may be carried out in accordance with customary international law and that laid down in the international conventions. In international law, therefore, the high sea has legal standing only as a place for carrying out subjective activities: it has never had an independent legal status. In other words, it is only through the activities carried out at sea, which are themselves regulated by laws, that the high sea has any legal standing.

As a result, the sea is exempt from territorial sovereignty, but not from legal sovereignty, because of the powers which states, through their national authorities, exercise over the activities carried out there by their own citizens. The fact that seafarers are citizens of a particular state overcomes the problem of territorial
sovereignty, since the principle that all human activity is legally regulated can be applied to the high seas.

With regard to navigation, the notion that a ship belongs to a legal system is given practical form in the **flag principle**. According to this principle, ships are subject to the law of the state whose flag they fly. The process of **registration** enables ships to be identified. They are listed in a register which is held by the state in accordance with its own internal law. Registration invests in the state a responsibility for ensuring that ships obey its laws, which must be in keeping with international law. To this end, it can employ the services of its navy and naval auxiliaries. A state's jurisdiction over its ships has been defined as the **power of policing on the high seas**. This power can also be exercised in respect of ships registered in other countries either on the basis of customary law or under the relevant conventions (especially as regards fisheries), or in the context of a unilateral claim by a state to protect its own legitimate interests.

The right of recognition - warships can request any ship to identify itself - and the right of hot pursuit have been established by usage and partially codified and can be exercised, at least in contiguous zones. The conventions have also extended the right to exercise control where particular conditions or circumstances obtain, generally for the purposes of preventing or suppressing particularly unpleasant crimes. Finally, unilateral claims will usually be contested in the courts of the flag state. It is, however, becoming customary to extend the use of controls provided for in the international rules of war to certain internal disputes.

3. **The flag principle and registration in international law**

In order to clarify the position of ships in international law, it must be emphasized that whereas under domestic law (though not in the case of flag of convenience countries), the **genuine link** between ship and flag state is based on certain socio-economic factors (construction, ownership, agent, crew, etc.), in international law, the **genuine link** consists of the **effective control of the state over the ship**. The problems associated with "shadow" flags are summed up in this definition, since the countries where they exist have neither the apparatus nor the will to exercise that control.

The 1958 Geneva Convention and the more recent Montego Bay Convention elevated ship registration from domestic to international law. Given the freedom which states have to formulate their registration requirements, they are obliged to exercise administrative, technical and social controls. In this respect, Article 94 of the Convention refers explicitly to safety, work on board ship and marine pollution, and lays down the international rules that govern navigation. The responsibility of the state in this respect is thus defined in this context.

UNCTAD prepared a draft text for a convention aimed at harmonizing registration requirements for ships. But the approach was not right. As has already been stated, the **genuine link**, which is important from an international point of view, is the existence of control procedures, and these are sadly lacking in the majority of the 130 countries which make up the "Group of 77" shadow flag states. The ability to exercise control presupposes an efficient maritime administration, an adequate navy and a comprehensive consular network. The response of the international community
to the widespread absence of control procedures has been to develop the law of the sea in the direction of **port state control and coastal state control**.

4. **Navigation: legal relations** (45)

The branch of domestic law dealing with navigation - in other words the legal subjects, means and activities, both public and private, which play a part in maritime transport - belongs both to private and public law, as a description of its purposes will demonstrate. This is not the place to enlarge on issues concerning the independent nature of the relevant legal framework: for our purposes, let it suffice to say that the special characteristics of navigation make it an economic activity requiring some intervention on the part of the authorities, and thus impossible to deal with under civil law alone. In this section, we shall try to give an overview of the main legislative bodies governing the legal relations of navigation; the following section will seek to provide a profile of the public bodies involved in the sector which goes beyond purely national characteristics; and, finally, we shall try to show how public activity regulates private activity (rules of conduct) in terms of the market, safety and environmental protection.

Shipping law is based on the notion of the **ship** as the good which enables navigation to take place. In fact, however, the ship cannot be unequivocally considered as a good. In international law, according to certain jurists, the ship assumes the status of a community. However, taking all the cases where, in strictly legal terms and leaving aside political considerations, the ship is the point of contact with international law, it would be more appropriate to define it as a **unit of production** characterized by a high degree of independence which, in commercial law, would make it a branch of a company.

In domestic law, however, the ship is considered to be an instrumental **good** of navigation, which can be defined as any construction (floating and mobile) intended for sea or inland waterway transport, for any purpose and in particular for commerce, towage, fishing and sport. At the time of its launching, the construction becomes a ship and is thereafter suitable for navigation. At the time of registration, certain technical features related to ocean and inland waterway navigation, tonnage (46), and sometimes to type and category are of particular importance.

Leaving aside for the moment the conditions which require intervention by the authorities and which fall within the domain of public law, it would be appropriate to mention the **ship’s papers** at this point. Despite their undoubted public law implications, these documents, described as **certificates** and **log-books**, are relevant as regards both private commercial law and labour law.

The **ship’s certificate of registry** records the name, type, characteristics, gross and net tonnage, owner’s name, place of registration and crew duties. It also contains basic information on all shipboard personnel.

The most important document among the ship’s papers is the **official log-book**, comprising the **ship’s inventory**, the **general and accounts log**, the **ship’s log** and the **cargo log**. The official log-book contains details of technical, administrative and day-to-day shipboard activities and is the responsibility of the master. It provides visible proof of an efficient service in the best interests of the ship operator.
Owing a ship is the same as owning other property as regards the law, but with special provisions for joint ownership with certain institutions. In terms of navigation, the ship operator is the most important figure, since it is he who commits the ship for one or more voyages or shippings, equipping it with the necessary provisions and placing it under the control of the master. The ship operator, as distinct from the shipowner, from whom he receives the ship on the basis of a right in rem or through a binding relationship, employs the ship for an economic purpose. He is therefore an entrepreneur engaged in shipping. A particular feature in shipowning is the shipping company, which is a group made up of the co-owners of a ship.

The operator has shore-based and shipboard collaborators who form the crew, the human element in the ship's organizational framework. Individual states, generally in accordance with IMO recommendations, establish the minimum number of crew members and their rank, and define their professional duties. A proportion of the crew is generally from the country of registration. In general, there is a quota system in favour of the country of registration for crew members and for certain roles.

In accordance with the principle of free movement of workers in the Community, such a quota applies to Community nationals in the case of ships belonging to Member States. Other special rules concern working conditions at sea.

The master occupies the central role and is the most important crew member. He is in charge of manoeuvres and navigation; the condition of the ship is his responsibility, as are the ship's papers. He represents the ship operator and, in some instances, the owner and carrier. The law gives certain powers to the master in his role as head of both shipping and the travelling community. He is also responsible for policing activities and maintaining discipline; in some cases, such powers revert back to the shipowners themselves. For the above reasons, the law lays down certain requirements with which the master has to comply.

From a legal viewpoint, three types of contract apply to shipping: leasing agreements, charter agreements and transport contracts. A leasing agreement is a do ut des contract by which the lessor (generally the shipowner) agrees to release the ship to the lessee, in return for payment. The ship can be leased on the basis of bare boat charter or fitted out, but in general, leasing out for carrying cargo is on the basis of bare boat charter to an operator.

A charter agreement, on the other hand, is a do ut facias contract whereby the charterer, the operator, agrees to complete one or more voyages in a specified ship on payment of a charter fee. The charter agreement may be on a time basis - where the charterer is able to specify the number of voyages a ship will make within a given period - or on a voyage basis, where the number of voyages is predetermined by the contract. It is the practice in maritime law to use the so-called charter party, which is different for time charter and voyage charter. A number of standard forms have been developed by organizations, associations and conferences for particular goods and routes.

Charter agreements and charter parties apply to non-liner voyages. Transport contracts can apply to any voyage and are also do ut facias contracts, whereby the carrier (who may be different from the operator) is obliged to carry persons or goods from one place to another.
5. **The public authorities**

Because of its nature and political importance, maritime transport is subject, unlike other commercial activities, to substantial official intervention, so that the relevant bodies constitute a genuine maritime administration whose influence, in some cases, extends beyond national boundaries.

Such is the case with **registration**, a complicated procedure whereby the ship becomes part of a country's merchant fleet and is allowed to fly its flag, with all the advantages and responsibilities that this entails. The issuing of the **ship's papers** is connected with registration, but the latter is more than a simple licensing procedure.

While a ship is still being built, but prior to its launching, the state intervenes through inspections and financial concessions. Through registration and technical control procedures, the state monitors the legality of the ship's condition and activities throughout its life. These controls are sometimes transferred by the country of registration to the port state or coastal state. This practice has already been mentioned, but we would highlight the organizational aspect of such a transfer of functions from the registration authority to the port authority, which has come to involve the offices of both port and maritime surveillance services.

One or more authorities may manage ports, depending on the flag state. These authorities are responsible for administering the following: the movement of shipping; professional and handling activities; and the use and policing of the port area, the territorial sea and the contiguous zone.

6. **Registration**

The role of the flag has been mentioned many times in the preceding pages. Through the act of registration, a state confers its flag upon a ship, thereby according rights to, and imposing certain responsibilities on, the owner and operator. It follows that the latter will tend to register their ships in the most convenient registry. We shall consider the concept of convenience in its broadest sense, rather than in purely economic terms. For example, during periods of international crisis, it is a fact that ships are transferred from open registers to those of the chief naval powers so that they can enjoy the protection of their navies (47). In order to deal with convenience in economic terms, we firstly need to define open registers. The conclusions of the Rochedale Commission are helpful in this respect. It succeeded in identifying the following characteristics which, since 1970, have been common to all **open registers**:

- registration open to non-residents;
- low or zero corporate tax rates;
- size of registered fleet disproportionate to the needs of the country;
- indiscriminate enlistment of foreign personnel;
- absence of facilities for enforcing international standards (48).

The lower running costs associated with open registers provide a considerable inducement (49).
A major disadvantage, however, is that the credit facilities which some countries offer to operators flying their own flag are not generally available to operators from open registers. The latter are also excluded from certain kinds of transport which, in domestic law, are reserved for a country's own ships (50). However, these disadvantages, which also apply to the Community, are disappearing.

Flags of convenience have a detrimental effect on safety and the environment. To counteract these effects, the powers of the coastal state and state of destination have been enhanced and the international conventions strengthened. From a purely economic point of view, flags of convenience represent an external threat to the Community fleet both in terms of competition and a reduction in the number of its ships. The Commission's communications (51) emphasize this problem. In the author's opinion, however, it would appear that the competitiveness of the Community is suffering because of the lower costs of merchant shipping in third countries, regardless of the fact that they use flags of convenience. The flags of convenience, however, are primarily responsible for the reduction in the Community merchant fleet.

The problem continues to exercise the minds of the Member States of the Union for the political and military reasons described above, and also because of employment and financial considerations. They have therefore come to the rescue on two fronts: firstly by offering support, which must comply with the provisions of the Treaty regarding state aid, and by setting up their own special shipping registers (52). Denmark, France (53), Finland, Portugal and Spain have gone down this path. Germany has established an international register which provides exemptions from German law for the maritime sector. These new registers now take precedence over the regular registers in the countries where they exist.

Among the other Member States, Italy is considering setting up a special register, whereas the United Kingdom and the Netherlands do not feel any need to do so since their operators have access to open registers in their overseas territories or dominions (54).

These special registers, in fact, signal the end of the legal unity that underlies the flag principle in its traditional sense. The only difference between these registers and the open registers lies in the enforcement of international safety and environmental standards.

In 1989 the Commission put forward a proposal for a regulation, which was amended in 1991, to establish a Community fleet (55) and a Community shipping register named EUROS. However, the proposal was not as well received by Member States as had been hoped, even though the Community register would not have replaced national registers but would have operated in parallel and on a voluntary basis. The proposal foundered because of the reluctance of some Member States to agree to any such policy on the sea, as well as dissent over specific points. The Commission therefore stated that it would withdraw its proposal and replace it with a directive establishing criteria for domestic registers (56). In the author's opinion, this would seem more in keeping with the principle of subsidiarity. It would also seem to be a logical development of Regulation No 613/91 on the transfer of ships from one register to another within the Community (57), which furthers the aim of removing technical obstacles hindering completion of the internal market and mainly
provides for mutual recognition of the certificates issued in accordance with the SOLAS and MARPOL Conventions, and other international rules.

This legislation proposed by the Commission regarding Member States' shipping registers is the internal reflection of a political and diplomatic move to make the registration of ships subject to control at international level, in order to ensure that maritime transport is safe, environmentally friendly and observes the rules of free and fair competition.

CHAPTER THREE

INTERNATIONAL RELATIONS AND COMPETITION

1. Freedom of maritime trade and international aspects of competition

The principle of freedom of maritime trade is a corollary of the principle of freedom of navigation, whereby states use each other's ports for loading and unloading, with certain limitations imposed by the international rules of war as well as by cabotage, which each country tends to reserve for its own shipping. Over the last few decades, pressure from third world countries has given rise to the unfortunate practice of restricting trade to ships registered in the countries whose ports are the points of departure and arrival of goods, known as terminus states, thus making the need for international agreements on maritime traffic apparent.

Another impediment to freedom of navigation are the conferences. These are agreements between shipping companies whose purpose is to regulate competition on certain routes (or rather in certain geographic areas) by means of practices that are prohibited in other sectors. It should be emphasized that not only do countries tolerate such practices, they actually encourage them, since conferences are believed to stabilize the market and guarantee a quality service.

The United Nations has attempted to deal with the problem in its conventions, of which the most important is the April 1974 convention, concluded in Geneva, on a Code of Conduct for Liner Conferences, which at 31 December 1995 had been signed by 78 countries, among them 11 Member States (58), though not Austria, Greece, Ireland or Luxembourg. Under the terms of this convention, terminus states are entitled to an 80% share of the traffic. However, the convention does not cover existing bilateral agreements whereby the terminus states have divided up all the traffic amongst themselves.

The nature and practices of conferences (59) need some explanation. A conference is an arrangement between two or more operators who, in a geographic area, combine together in order to regulate competition amongst themselves and exclude operators - known as outsiders - who are not party to the arrangement. The conferences are either closed, where admission of a new member entails amendment of the rules, or open, where it is enough merely to ascertain the capacity and reliability of a new member. The organization usually has an assembly and an executive body.
In practice, conferences have developed a wide range of measures for regulating competition. Beginning with the harmonization of tariffs and contractual conditions, these may extend to the dividing up of routes and even to joint management of cargoes and chartering. Conference agreements also allow members to arrange independent tariff initiatives, enabling them to charge, on an occasional basis and for particular types of cargo, and after notifying the other conference members, a tariff different from the standard rate. Conferences can also impose restrictive conditions on users. Ships that are very cheap to charter are used, in order to keep outsiders out of the market.

The 1974 Geneva Convention granted formal recognition to conferences, stressing their stabilizing effect on the market but specifying that they had to be open and that the conditions would be different for terminus states and third countries. Any practice likely to exclude outsiders was forbidden and special rules for loyalty arrangements with regular customers were approved.

The market is therefore becoming increasingly protectionist, and this in turn is leading to further public intervention through international negotiations to conclude trade agreements or diplomatic measures to protect domestic businesses, as well as through economic support for the latter. On the other hand, multilateral negotiations aimed at deregulating international maritime transport have been a failure. It was left out of the General Agreement on Trade Services (GATS) altogether, while a Negotiating Group on Maritime Transport Services was set up to deal with international transport, auxiliary services and access to port structures.

The Commission attached great importance to these negotiations, during which it was hoped that the most favoured nation arrangement would be dealt with as fully as possible. The negotiations, which should have ended in June 1996, were suspended on 28 June on the understanding that the parties would return to the negotiating table no later than 2000 (sic) and would not adopt, in the meantime, any restrictive measures except in self-defence (60). The suspension was described by the Commission, which led the delegation, as a rescue operation rather than progress. In the author’s opinion, the undertaking not to adopt measures other than in self-defence is insufficient to dispel the Commission’s concern over unacceptable restrictions on maritime transport, which it voiced in its communication Towards a New Maritime Strategy (61).

2. The Community’s international relations

The Commission has produced its own communication on the issues covered in this section which does not rule out an international maritime transport policy. The communication, Towards a New Maritime Strategy (62), also includes some general guidelines: the Community should endeavour to achieve more open markets and greater transparency in allocating state aids by building on the initiative taken within the OECD to draw up a full inventory of state aid given by its member countries. The GATS also includes a general provision on subsidies which is applicable to maritime transport and which foresees the development of subsidy disciplines in forthcoming negotiations. More generally, the Commission would like to see the introduction of international rules on competition, limiting restrictions to those who offer substantial benefits to shipping agents and, in any event, excluding the non-use of capacity.
In the past, agreements on maritime transport with non-Community countries have generally been concluded bilaterally by Member States and, in most cases, have consisted of granting certain rights to the ships of the contracting parties when in each other's ports or while sailing between them. On the basis of a directive adopted in 1977 (63), Member States now consult the Commission regarding such agreements, but this has not satisfactorily resolved the problem of coordinating the different national policies vis-à-vis non-Community countries. The Commission recognizes the need to do this in order to ensure equal treatment for Community companies in third countries, which tend to do business with individual Member States. The Commission would therefore like to replace national agreements with Community ones. For example, it is considering an agreement with a major Asian power aimed at securing definite openings for subsidiaries of Community shipping companies which need to have a commercial presence in the country, but are hampered by the lack of a clear regulatory framework.

3. Community law in relation to maritime transport

The description of the international situation in the previous section has shown that Community competition policy operates on two fronts: completion of the internal market to ensure free access to the various domestic markets and open competition between Community businesses; and protecting the interests of the latter in the international transport market. Competition policy is part of a wider regulatory framework, the main concerns of which are safety and environmental protection within the sector. The special characteristics of the legislation in question should be noted before we consider Community policy in relation to the main topic under discussion in this chapter. This would be an appropriate point at which to recall the relevant provisions.

As has been noted, Article 84(1) of the Treaty does not include either maritime or air transport in the common transport policy. They are dealt with instead in Articles 74 to 83. Article 74(2), in particular, gives the Council power to adopt measures relating exclusively to these two modes through the consultation procedure. In practice, and thanks to the efforts of the European Parliament, both maritime and air transport, despite certain legal differences, have now been completely integrated into the common transport policy.

Article 2 of the Treaty is particularly relevant to the regulation of maritime transport, since it confirms the principle of the common market and, in particular, some of the specific aims of Community action set out in the following article: a common commercial policy; the abolition, as between Member States, of obstacles to the free movement of persons and services; a policy in the sphere of the environment. The first two apply specifically to maritime transport as an economic activity: the second describes the precise nature of the common market, while the first transposes it to the international level. The third aim concerns the essential relationship that must exist between all types of activity and the environment; in other words, maritime transport should not be considered in isolation, but as an activity which is potentially damaging to the environment.

Articles 85 to 94 of the Treaty, which regulate competition, are also relevant to maritime transport, in particular Articles 85 and 86. These prohibit any commercial practices in the maritime transport sector which are based on rules that are either
additional or subsequent to the general rules. Finally, one should bear in mind Article 130r, which provides for a policy on the environment.

4. **Freedom to provide services in the Community (maritime cabotage)**

As part of the process of completing the internal market, the freedom to provide services to maritime transport was ratified in 1986 (64), with certain derogations which have since expired. Freedom in this sector was achieved with the inclusion of maritime cabotage (65), which also covers public services, and the entry into force of the regulation on 1 January 1993. Apart from temporary derogations, which will mostly have expired by the end of 1998 (66), Community shippers can operate anywhere in the Community provided that they use ships registered in a Member State or with EUROS (when it is set up) (67), and satisfy all the cabotage requirements of the Member State in which they are operating (68). A **Community shipper** need not necessarily be based in a Community Member State; those with businesses outside the Community are also eligible, provided that they are Community citizens, the businesses are controlled by Community citizens and their ships fly the flag of a Member State.

Access to maritime cabotage is dependent on flag, but different laws apply to the different types of cabotage: in the case of **mainland cabotage** (69) and cruise ships, the law of the flag state applies, but if the ship is less than 650 gross tonnes the law of the host state can apply. In the case of **island cabotage** (70), the law of the host state applies (71). Nothing has yet been settled for **offshore cabotage**, i.e. for non-navigable structures erected on the continental shelf.

5. **Competition in Community law**

Competition within the maritime transport sector is a sensitive issue for the Community, in the sense that it must encourage competition within its boundaries while protecting the interests of its own firms on the international markets. These obligations, together with a plethora of internal differences within the maritime market compared to land-based transport, explain why this mode was excluded from the regulation (72) dealing with competition in the transport sector. Competition legislation in respect of maritime transport was not, in fact, implemented until 1986 (73) and the rationale for the regulation clearly shows the underlying problems which have prevented competition rules from being rigorously applied. These were as follows: firstly, the conferences, which were thought to make a positive contribution to the smooth functioning of the market; secondly, the 1974 Geneva Convention; thirdly, the need to prevent Community competition rules from harming relations with third countries and, consequently, the Community's commercial and maritime interests; fourthly, the need for **deregulation** in a way that pre-empted further legislation rather than altered the substantial body of existing legislation, since it is primarily the responsibility of undertakings to see to it that their agreements, decisions or concerted practices conform to the rules on competition - which should, incidentally, also be the case for businesses operating in other sectors which have to notify the Commission. One has the impression that the legislators, in their anxiety to strengthen the competitiveness of the Community merchant fleet in the international market, wished only to enforce competition rules in cases where the businesses concerned took the initiative. We are not in favour of making such an exception, since it creates a breach in the system for monitoring competition and encourages disregard for the rules relating to competition in maritime transport.
The regulation, which excludes tramp vessel services on the basis of Article 85(3) of the Treaty, makes certain practices and understandings exempt from the application of Article 85(1). The regulation therefore does not apply to technical agreements and various understandings concluded within the scope of a maritime conference relating to the coordination of sailing dates; times and frequency of sailings and calls; the allocation of cargo or revenue among members and the regulation of carrying capacity.

On the basis of a later Council regulation (74), intended to facilitate the formation of consortia between Community shippers so as to improve the competitiveness of the Community fleet, the Commission adopted a regulation of its own (75). Under this regulation, agreements that involve liner transport services for cargo only, on international routes, are exempted from the prohibitions imposed under Article 85(1) in respect of the following activities:

- the joint operation of liner shipping transport services;
- temporary capacity adjustments;
- the joint operation or use of port terminals and related services;
- the participation in one or more of the following pools: tonnage, revenue or net revenue;
- the joint exercise of voting rights in the conferences;
- a joint marketing structure and the issue of a joint bill of lading;
- any other activity ancillary to those referred to above.

In any case, agreements intended to reduce the use of existing capacity were excluded from the exemption, as clearly indicated in the projections on which the regulation was based. The latter was not meant to eliminate competition, so for the exemption to apply, two different sets of conditions have to be met:

- there must be effective price competition between the members of the conference in their contractual arrangements with users, and effective price competition - actual or potential - from shipping lines which are not members of that consortium;
- if the consortium operates within a conference, its market share of direct trade in terms of volume of goods carried must be under 30%, or 35% if it operates outside a conference.

Consortia must fulfil certain obligations if they are to qualify for exemption:

- the right of withdrawal for each member, upon notice as set out in the regulation;
- where a consortium operates with a joint marketing structure, each member of the consortium must be free to engage in independent marketing without penalty, subject to a maximum period of notice of six months;
- the right of each member of a consortium to offer service arrangements (76);
- there should be no discrimination in rates according to country of origin or destination, or port of loading or unloading, unless such rates can be economically justified.

With regard to transport users, the regulation establishes that there should be consultations between users or their representative organizations and the
consortium, and that arrangements between users and consortia should also be exempt from Article 85(1).

6. **Protection of Community maritime interests**

As regards measures for protecting Community maritime interests, the maritime package contains two regulations. The first of these deals with unfair practices by extra-Community shipping companies (77), and the second with protectionist measures by third countries (78).

The purpose of the first regulation was to combat the widespread practice of charging freight rates for the transport of selected commodities which are lower than the lowest rates charged for the same commodities by established and representative shipowners. The regulation was intended to combat unfair pricing practices arising from non-commercial advantages granted by third countries by means of countervailing duties on specific grounds, without preventing, restricting or distorting price competition by non-conference liners. There would therefore be a preliminary examination of the possible injury, carried out in accordance with the criteria laid down in the regulation, in order to eliminate from the causes of possible injury those not attributable to unfair pricing practices. If sufficient evidence existed to begin investigations, these would have to be carried out with the utmost transparency. Where there has been an unfair pricing practice, either the party responsible must give an undertaking, or the Council may impose a countervailing duty on the foreign shipowner not exceeding the difference between the freight rate charged and the normal rate (79).

The purpose of the second regulation was to counteract the legislative and administrative measures by third countries and international agreements among the latter which aimed to protect their maritime interests, and which either infringed or evaded international usage and treaties. The regulation was principally intended to combat captious interpretations of the Geneva Convention by the authorities in third countries for the purposes of benefiting their own shipowners and restricting access to the bulk transport market. The response to such protectionism was a **coordinated action**, adopted by the Council at the request of a Member State, consisting of diplomatic representations and counter-measures directed at the shipping company or companies of other countries benefiting from the action taken by the countries in question. The counter-measures consisted of a requirement to obtain a permit to load, carry or unload cargoes, as well as the imposition of taxes or duties.

7. **State aid**

Any policy on competition must take account of state aid. It is therefore proposed to tackle the issue on two fronts, but in different ways from those mentioned in connection with company practices. In the case of the latter, the different variables involved - the intra- and extra-Community markets - have effectively resulted in two competition policies. In the case of state aid, however, the only variable is the aid provided by Member States, so only one policy is needed, based on an even-handed application of the derogation contained in Article 92(3)(c) of the Treaty (80).

The above derogation, with regard to maritime policy, is based on the need to sustain development in both economic and employment terms, and on **the special**
nature of international competition in the sector (this being what particularly concerns us). The Commission would therefore like to amend its guidelines on state aids in the maritime sector (81), to reduce the heavier fiscal and other types of burden borne by Community registered shippers compared to those registered with other flags (82). The apparent link between state aid and flag would seem to be leading to support for diplomatic measures to have registers regulated at international level, with problems being dealt with internally.

In carrying out this policy, the Community has to take account of the different national approaches to support for maritime transport. Depending on the characteristics of the various merchant fleets, this support may have different priorities: maintaining a flag fleet, fitting-out, or one particular market segment. Nevertheless, certain basic principles relating to common interests, transparency and the admissibility of the distortions of competition which inevitably creep in through state aid should be maintained.

As indicated in the second section, there is a link between aid and the internationally agreed measures which the Community intends to implement in order to liberalize transport at world level. Progress made in this direction should also have an effect on any derogations, although the recent breakdown of the maritime transport negotiations suggests that it is unlikely that liberalization can make any significant headway in the immediate future. An increase in protectionist measures can therefore be anticipated.

Although emphasis has been placed on the role of state aid in counteracting the adverse effects of distortions in international competition, we should not forget that it also provides support for training, employment and research. Lastly, it should also be remembered that aid for maritime transport is connected with aid for the marine industries, particularly shipbuilding, and therefore has a direct effect on sectoral investment.

CHAPTER FOUR
SAFETY AND THE ENVIRONMENT

1. Preliminary technical comments (83)

The subject of this chapter is the safety of navigation from the viewpoint of the ship as a travelling community, and protection of the marine environment from the harmful effects of navigation, whatever the cause: shipboard conduct (84), weather conditions and incidents arising from the carriage of dangerous goods and pollutants.

The risks connected with maritime transport are now much higher, and averting them is a priority for the public authorities concerned. They have to ensure that all the elements which contribute to a ship’s safety - buoyancy, emergency equipment and procedures, watchkeeping, salvage and rescue procedures, instruments, and trained and qualified personnel - are in place or maintained in good condition. In the light of these elements, the ship is awarded a class indicating its seaworthiness.
Every type of ship is susceptible to particular risks. Oil tankers, for example, are more dangerous when empty than when fully loaded. When the tanks are empty, gases may be released which can lead to fires or explosions. Inert gases may be pumped from the empty tanks to prevent accumulation. Constructing oil tankers with segregated ballast tanks is another preventive measure that has been introduced through IMO and American rules on safety.

The stability of ships carrying grain and dry bulk can be adversely affected if the cargo shifts in rough seas. Ensuring that the load is safely stowed is an essential safety precaution. As regards the ship, its own stability is of prime importance. This is a vital factor where ro-ro ferries are concerned. In addition to an even distribution of weight - which is hard to achieve - it is essential that the bow doors are properly closed.

2. Internationalization of safety and environmental controls (85)

National legislation which ensures that the standards mentioned in the previous section are maintained should be sufficient to guarantee a ship's safety. However, increased ocean trade in dangerous goods and greater sensitivity regarding environmental protection have led to the internationalization of rules in this field. The only way to protect the marine environment from pollutants which, because of the very nature of the sea, become dispersed over vast areas, is by ships observing such provisions, regardless of flag. Marine pollution can affect huge expanses of ocean and stretches of coastline which often belong to more than one country. It also damages fish stocks which are a common good, despite the restrictions on the size of catches imposed by international agreements. As a result of these developments, shipping safety is now an integral part of protecting the environment.

International legislation has continued - and in some cases extended - the process of restricting the Mare liberum. This process, however, has not been accompanied by any extension of the sovereignty of the coastal states. Rather, it has been accomplished by increasing their powers of intervention, as well as those of the port state, at the expense of the flag state. As a result, the roles of the port state and the coastal state have increased in importance. When the Torrey Canyon went aground in 1967, it was bombed by the British air force - not the flag state - in order to stop the spillage of oil. This constituted a break with the traditional law of the sea. The rights and duty of the coastal state to intervene on the high seas, where pollution has occurred, was recognized; not, however, in order to protect its own interests - the coastal state does not have to have an interest - but in the interests of the international community as a whole. Where intervention takes place in the exclusive economic zone, it has to be in the collective interest, and not just in the interests of the coastal state, in order to be lawful. The legality of the intervention would depend on the circumstances, even when it is a question of exploitation of the marine resources of the coastal state.

The power of intervention on the high seas was laid down in several international conventions during the 1970s and finally codified in the Montego Bay Convention. Not only has the power of intervention been adopted through the numerous international conventions, it has also been reiterated elsewhere, with the result that its application now extends to countries which are not parties to the conventions. It is now part of customary law and therefore applicable to the whole international community.
The power of intervention is not confined to the coastal state. The port state can also intervene when the polluting ship reaches one of its ports, regardless of the area in which the pollution occurred. While the coastal state can only intervene in the pollution zone, however, the port state, which may be far away from this zone, is obliged to intervene, punish and even arrest the offending ship, in order to ensure that it complies with international legislation.

It is not difficult to see how such powers of intervention are weakening the influence of the flag state and how, as a result, the advantages offered by flags of convenience, which are less rigorous with regard to safety and environmental standards, are diminishing.

3. Conventions on safety

Of all the international conventions on maritime safety, the most important is the SOLAS Convention of 1974, which encompasses a series of conventions on the safety of life at sea and replaced the 1948 convention on fire protection, the carriage of dangerous goods and rules for the carriage of dry bulk, all of which are a major cause of incidents at sea. The 1974 convention, which entered into force in 1980, contained certain technical regulations and also provided for safety controls through the issuing of certificates by the flag state and inspection of those certificates by the port state. In 1978, a protocol was added which contained provisions relating to the construction, equipment and operation of vessels. Together, these international regulations, which allow states other than the flag state to exercise controls, represent one of the most innovative aspects of SOLAS. The 1972 convention on preventing collisions at sea, which entered into force in 1978, and the 1979 convention on maritime rescue, which requires states to maintain adequate rescue services in their territorial waters and along their coasts, also deal with safety issues.

In addition to these conventions, the International Maritime Organization also adopts recommendations, mainly of a technical nature. The IMO is a specialized agency of the United Nations. The mandatory requirements laid down in SOLAS 74 are contained in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

4. Conventions on the environment

The 1973 MARPOL Convention for the Prevention of Pollution From Ships, which entered into force in 1978, was of particular relevance from an environmental point of view. During the same year, a protocol to the convention that referred specifically to tankers was also adopted. Above all, MARPOL was instrumental in defining harmful substances as follows: substances which, when introduced into the sea, are likely to endanger human health, harm biological resources and marine life, impair natural beauty, or hinder any other legitimate use of the sea. Incidents are broadly defined, and the term covers any occurrence involving the discharge or probable discharge of harmful substances.

The convention lays down binding rules for the discharge of harmful substances for the purposes of securing life at sea, or in limited quantities. Intervention for the
purpose of preventing marine pollution arising from the discharge of harmful substances or effluent containing harmful substances is permitted.

The rules on the various sources of pollution are set out in five annexes. Annex I contains regulations for the prevention of pollution by oil; Annex II lays down general rules for the prevention and control of pollution by noxious liquid substances in bulk; Annex III contains general rules for the prevention of pollution by harmful substances carried by sea in packaged forms, or in freight containers, portable tanks or road and rail wagons. To supplement the provisions of Annex III, the government of each party to the convention must issue detailed requirements on packaging, marking, labelling, documentation, stowage, quantity implications, exceptions and notification of the appropriate port authority by the shipowner or his representative of the intention to load or unload harmful substances. Annexes IV and V contain regulations for the prevention of pollution by sewage and garbage from ships. A series of protocols followed, aimed at establishing uniform criteria for application of the above regulations, together with a list of polluting substances. Some of these protocols entered into force in 1992.

The mandatory requirements of MARPOL are contained in the IBC Code and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code). The IMDG Code and the Code of Safe Practice for Solid Bulk Cargoes (BC Code), which are applicable worldwide, recently introduced integrated rules on safety and pollution prevention.

On the basis of MARPOL and SOLAS, the IMO has also established criteria for identifying protected sea areas, special areas and particularly sensitive areas for which a higher level of protection is envisaged which will also apply to shipping. IMO Resolution A.720 (17) of 16 November 1991 on Guidelines for the designation of special areas and the identification of particularly sensitive sea areas is of particular interest in this respect.

Technical regulations alone are not enough to safeguard the environment, and international maritime law has recognized the need to establish liability according to the principle that the polluter pays. To this end, a number of conventions have been concluded on liability for environmental damage which overcome the political and legal problems resulting from the differences in national systems. The main difficulty has been to establish a legal basis for making the state liable for damage arising from the actions or conduct not of its own organs, but of merchant vessels belonging to persons separate from the state over which it has no control regarding operations, or often as to whether or not the ship or its operator abides by the rules on pollution prevention. This is the case with flags of convenience. The problem has been overcome by making the operator of the polluting ship liable, and by publicly guaranteeing compensation claims that are beyond the means of a single person or body.

In general terms, the relevant conventions (in this instance the international regulations on oil pollution) make the owner of the ship carrying harmful material liable, with possible limitations on liability - except where it is indisputably his fault - and exoneration in exceptional circumstances such as war, hurricanes, submarine earthquakes, etc.
Compensation is guaranteed through compulsory insurance which allows the injured party to make a claim directly to the insurers. The 1971 Brussels Convention (90) makes provision for the setting-up of an international fund to provide compensation for oil pollution damage, financed by the oil industry.

The system which has evolved is a modern one in legal terms. The rules it incorporates have been specially developed to deal with reparations for pollution damage by sharing the financial burden equally between the ship operator and the oil industry. Making the producer partially liable for pollution occurring during carriage is the most innovative aspect of the legislation, since it gives practical expression to the principle of internalizing external costs - an essential corollary of the polluter pays principle. In other words, damage to the environment does not result solely from an action or omission by whoever had responsibility for the harmful material at the time of the incident, but is an inherent feature of the material itself, whose production costs must also include the cost of potential damage to the environment either in the course of its normal use or as the result of an incident.

The IMO monitors the instruments for determining questions of liability for damage to the marine environment and has adopted a resolution entitled Future development of the intergovernmental oil pollution and compensation system based on the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage, 1971 (91).

5. Community safety and environmental standards

The European Community has always been very much aware of the problems posed by safety and the environment, both of which have a legal basis in the Treaty. There is even a specific environmental policy which is also based on the polluter pays principle. Safety is one of the objectives of the common transport policy, as provided for under Article 75.

In point of fact, the above article does not refer to the maritime mode, and a careful reading of the Treaty, in particular Article 130r(2), might lead one to believe that environmental policy does not apply to the sea (92), nor Article 75 to maritime transport. However, the Community has always pursued these two objectives in relation to all modes of transport, irrespective of the legal base, and they are now firmly embedded in the principle of sustainable mobility, which underpins the common transport policy as a whole.

The relevant Community legislation takes two forms: that which simply reflects international legislation, and that providing for independent measures - which nearly always, however, have some connection with the international rules. Community law has thus been influenced by the internationalization of maritime transport legislation. Consequently, the Community is unable to pursue safety and environmental policies which are totally independent of international approaches. Its efforts in the maritime sector are therefore geared towards converting IMO recommendations into Community acts - mainly directives - so as to improve efficiency and harmonization, at least within the area under Community jurisdiction.
The issues dealt with in this chapter will identify the rules which impose certain requirements and codes of conduct on shipping, those which establish public control procedures for the latter and those which provide for Community initiatives to assist navigation.

6. Rules and requirements for the operation of ships: legislation in force

The main Community provision in this respect is Directive 93/75/EEC of 13 September 1993 on the minimum requirements for vessels entering or leaving Community ports and carrying dangerous or polluting goods. The directive lays down the procedures by which the vessels referred to in the title should supply the information specified in the SOLAS and MARPOL Conventions to the Community port authority. This information, which is set out again in the annex to the directive, concerns the destination, route and cargo of a departing ship, its crew and equipment, as well as the possession by the authorities of the documents required under the conventions. It should be made available to the port authority on arrival or departure from a Community port, or where an incident has occurred. As regards the latter, the powers invested in countries by the conventions are indicated: to limit the movements of the damaged ship or send it by a particular route, bearing in mind the captain's responsibility for safety, and to ask for further information.

The directive was intended not only to extend the powers of the port state, following a trend that will be dealt with more fully in the section on controls, but also to enhance the powers of the coastal state where an incident has occurred. This coincided with developments in international law, but the exercise of such powers was limited to ships which, prior to the incident, had docked at or were bound for a Community port. Ships in transit between two extra-Community ports are therefore excluded.

In addition, following a tragic series of accidents involving ro-ro passenger ferries, the Community has absorbed into its own legislation the IMO's ISM code, which established an international management code for the safe operation of ships for pollution prevention. The international legislation will enter into force on 1 July 1998. Having already been incorporated into Community legislation, it has taken effect on 1 July 1996 when Regulation No 3051/95 of 8 December 1995 on safety management on roll-on/roll-off ferries enters into force.

The regulation applies to passenger lines operating services to and from Community ports, and it is incumbent upon the flag state and the port state to enforce it. The ISM code requires shipping companies to have a safety management system (SMS), comprising a safety and environmental protection policy, instructions and procedures for its implementation, defined levels of authority and lines of communication between and among shore and shipboard personnel, and procedures for responding to emergencies, as well as for internal audits and management review. Maintenance of the ship and its equipment and, in particular, regular inspections to identify items whose failure would be likely to have dangerous repercussions are also covered by the SMS.

7. Rules and requirements for the operation of ships: proposals

The proposal for a directive on maritime equipment is more general in scope and will have important economic consequences. It deals with the technical
harmonization of 84 different types of marine equipment, as well as the standardization of inspection procedures carried out by competent national authorities. The proposal is intended to make maritime transport safe by rigorously testing essential equipment. It deals with types of equipment which ships should have on board in accordance with the conventions, but which have to be approved by the national authorities. The discretionary element has, however, led to national authorities adopting rules based on those contained in the international conventions but lacking in uniformity, a situation exacerbated by differences in the subsequent testing.

To remedy this shortcoming, the Commission is proposing to harmonize the rules in question at Community level; it points out how, in addition to the benefits of improved safety, there will also be an economic benefit in the form of a reduction in the cost of equipment, lowering the construction costs of a ship by between 0.22 and 1.3%.

At operational level, the proposal for a directive divides equipment into two categories: equipment with detailed testing standards already existing at international level (66) and items for which such standards do not yet exist (18). For the first category of equipment, by setting out the requirements of the relevant international instruments, the proposal for a directive incorporates these into Community legislation. As regards the second category, the Community will ask the IMO to draw up detailed instructions for testing equipment. The regulations approved for the first category, and those to be adopted for the other items, apply to equipment placed on board a new ship, as defined in the proposal, for which certificates have been issued by the competent authority of the Member State, or equipment to be installed or replaced. In other words, the directive does not apply to equipment already installed at the time of its adoption.

The proposal also seeks to establish a uniform procedure for national authorities to assess conformity with the rules, to introduce a distinguishing mark for the equipment, and to provide for some form of public control over its manufacture.

Analogous to the above provisions are those contained in a proposal for a directive on safety rules and standards for passenger ships (99). This applies to ships on domestic routes and contains the same restrictions regarding date of construction and installation of equipment as those relating to equipment. Since the rules on safety envisaged in the proposal go beyond those contained in SOLAS, they do not apply to international transport. However, the proposal allows for the Commission to ask the IMO to speed up the process of harmonization of the SOLAS provisions giving more discretionary powers to national authorities, at the same time reserving the right to apply its own rules, even to international transport, should the IMO not complete the harmonization process within a reasonable period of time.

The proposal aims to separate passenger ships into four different classes by route, and lays down safety requirements for equipment and certain procedures, in particular the GMDSS (100), for each class or group of classes.

8. **Seafarers**

Community legislation has two objectives in respect of seafarers: firstly, to encourage the free movement of workers in the sector through mutual recognition of
diplomas and vocational training; and, secondly, to contribute towards increasing safety and environmental protection through improved training of maritime personnel. The first objective was achieved by means of directives establishing a general system of recognition of diplomas and vocational training (101) for workers in all sectors. The system did not, however, harmonize training in such a way as to meet the requirements of the maritime sector or those of its rules on safety. This goal was achieved through Directive 94/58/EC of 22 November 1994 on the minimum training requirements for seafarers (102), by which the 1978 IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers, generally known as STCW, was translated into Community law.

The STCW Convention lays down certain mandatory training requirements for crew members on board ships registered in Member States who carry out specific tasks referred to in the convention: the master, the chief engineer, the officers, ratings and radio operators. The directive also contains rules on the issuing and inspection of certificates for performing the above tasks.

As we have seen, this directive is applied according to the flag principle, but certain rules give the Community port state the power to enforce compliance with Article 8 in the case of ships of third countries. This article deals mainly with knowledge of languages by crew members responsible for communications and emergency procedures in certain types of ship, such as passenger ships and those carrying polluting substances.

9. Controls on ships

The effectiveness of the measures for promoting safety and environmental protection depends on the procedures for enforcing them, and in the case of maritime transport, which is essentially international in character, it also depends on the widest possible harmonization of control methods and procedures. Directive 94/57/EC of 22 November 1994 on common provisions and control mechanisms for ships and relevant activities of maritime administrations (103) is a move in this direction. While it does not incorporate the relevant international rules, the inspection and control procedures followed by the bodies to which the directive applies are the same as those laid down in the conventions.

The directive is aimed at uniting the principle of free movement of services with the requirements of public law as they relate to the sector. It therefore leaves it up to Member States to decide whether to entrust inspection and control of ships flying their respective flags to their own authorities or to recognized outside bodies, i.e. those in possession of the qualifications laid down in the directive (104). A further restriction on the free movement of services is the ability of each Member State to limit, objectively and transparently, the number of authorized bodies. In each case, it is up to the country in which the recognized body has its headquarters to ensure that it carries out its functions correctly and as part of a system for sharing information with the Community and other Member States.

Furthermore, since non-compliance with the international conventions by ships from extra-Community countries constitutes an unfair competitive advantage, port state control and control of ships flying the Community flag are coordinated to ensure that extra-Community shipping does not receive better treatment than Community shipping. To this end, it has been expressly established that where a classification
body which does not have the qualifications specified in the directive is responsible for the classification, this constitutes a condition for a possible inspection. If it emerges that there has been an infringement of the relevant international convention, the Community port state is obliged to communicate the results of the inspection to the Commission and the Secretariat of the Memorandum of Understanding (105). Information on classification bodies is also distributed annually to other Member States and to the Commission.

In harmonizing control procedures, the Community is trying to extend the application of port state control as far as possible, so as to increase the likelihood of the technical rules absorbed by the Community into its own legislation being enforced (106). Here the Community is following a recent trend in international law, albeit an unpopular one in some cases. The efforts of the Community in this respect should be seen in the context of a wider agreement between the European maritime countries (the Community countries plus Norway), whose maritime administrations signed a Memorandum of Understanding on Port State Control (107) on 26 January 1982, whereby they agreed to institute an effective control system to enable port states to ensure that foreign merchant ships visiting a port of a state party to the agreement conform to the provisions laid down in the international conventions. The Memorandum contains a series of technical rules and control procedures. However, it does not appear that it has achieved the desired results:

... the application of safety rules is inconsistent, nor is there a systematic procedure for inspecting and stopping ships. There is no effective and transparent system for exchanging information and there is no uniform legal base for carrying out the agreed rules. The signatory nations which agreed, within three years, to inspect 25% of foreign merchant shipping visiting their ports, to deal with defective ships or delay their departure and to create an information system to provide mutual assistance, have made little or no progress. (108)

In 1995, the Community absorbed the Memorandum into its own legislation as Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port state control) (109). Ships docking at Community ports or at offshore installations, or which are moored off such structures, with the exception of fishing vessels, warships, naval auxiliary machinery and pleasure craft, are all subject to the above directive.

There is a link between this directive and a proposal for a directive concerning the setting up of a vessel reporting system in the maritime zones of Community Member States (110), whereby a given area of coastal waters would be divided into sections corresponding to each Member State, for the purposes of operating a European reporting system, Eurorep (111). It would be mandatory for ships carrying dangerous goods or pollutants and flying the Community flag, sailing towards a Community port or having to anchor in the territorial waters of a Member State to participate in the system. For others, it would be optional.

On entering a section, any ship participating in the system would be required to inform the appropriate maritime traffic service (VTS) of its name, call sign, IMO identification number, position and route, and of the presence on board of dangerous goods or pollutants.
The crucial question is whether the system complies with international law in two respects: making notification mandatory in sections of the maritime zone that are outside territorial waters; and making notification mandatory for non-Community shipping in transit through the maritime zone. The first problem has been resolved by making compulsory notification in international waters mandatory from the time that the relevant amendments to the SOLAS Convention enter into force. The second is still causing problems for some Member States.

Although Regulation No 1978/94 of 21 November 1994 on the application of IMO Resolution A.747 (18) on tonnage measurement of segregated ballast tanks in oil tankers (112) has nothing to do with controls, it is nevertheless of concern to the companies which manage the ports, since the problem has become urgent in the last few years.

Annex I to the MARPOL Convention requires tankers of more than a specified gross tonnage to be equipped with tanks suitable for ballast water that is free of oily mixtures (113). In 1990, the United States passed the Oil Pollution Act, which prohibited tankers without segregated ballast tanks (SBTs) from entering its ports and lent urgency to the construction of this type of tanker.

Tankers with SBTs were penalized, however, because they had a lower ratio of cargo capacity to gross tonnage, which meant they had to pay higher port charges. To rectify the situation, the IMO approved Resolution A.747 (18) on 4 November 1993, allowing the tonnage of segregated ballast tanks to be excluded from the gross tonnage calculation, thereby reducing port charges. Alternatively, a tanker could opt for an across-the-board 17% reduction in port charges. This meant that tankers with SBTs were no longer penalized.

Although the IMO resolution was approved by all Member States, it was not applied by all Community port authorities, some of which were unwilling to lose part of their revenue. For this reason, the Community has absorbed the IMO resolution into its own regulation, thus making it directly applicable.

10. Assistance to shipping

The Community’s commitment to implementing telematics systems for assistance and control in navigation is of particular importance. In this context, the Council has adopted Decision 92/243/EEC of 25 February 1992 on radionavigation systems for Europe (114), which gives the Commission the necessary powers to coordinate Member States’ actions in this area and to promote the work on drawing up plans for satellite radionavigation.

The Council’s resolution of 24 October 1994 on telematics in the transport sector (115), which deals with the issue in more general terms, indicated that the introduction of a computerized real-time system for ships carrying dangerous goods and pollutants should be a top priority. The same applies to the development of the exchange of computerized information between port state administrations.

These were followed by the Council resolution on the European contribution to the development of a global navigation system (GNSS) (116). This resolution invited the Commission to develop a European system to complement the existing ones and to lay the foundations of a second stage (GNSS 2) for civilian use, in a
process of concertation with the ICAO, the IMO and the other international agencies concerned, with the additional aim of avoiding duplication of activities.

In 1994, the Commission also issued its communication on telematics applications for transport in Europe (117), which defines a framework of initiatives in a field which is very important in terms of achieving sustainable mobility. The general approach to telematics applications is that of an open network architecture which allows interaction and interfunctioning between the various elements in the system. Such a concept relies on the creation of services and infrastructures at the following levels:

- **information services**, i.e. data management, including such things as smart cards and the development of radar data processing and data transfer for freight and management resources;
- **traffic control/management and information centres** which provide basic traffic services, including in particular VTS (Vessel Traffic Services Systems);
- **telecommunications infrastructures**, which in the maritime sector consist of communications/navigation satellites and the relevant apparatus;
- **basic transmission services** which are not yet geared towards transport;
- **transport telematics services**, which includes a number of services for transport operators and users.

As part of a global telematics system for transport, the Commission envisages the implementation of a management and information system for sea/river traffic (VTMIS, Vessel Traffic Management and Information Systems), aimed at improving the safety and efficiency of the transport mode or modes concerned. It would be connected with a computerized system for the exchange of information between national administrations, which in turn would help to strengthen the role of the port state. The Maritime Industries' Forum would be involved in carrying out these objectives (118).

More recently, the Community guidelines for the development of the trans-European transport networks (119), the difficult framing of which began in 1994, at the time when the above documents were produced, provides for a maritime traffic management/information network (Article 15 and Annex II) and a positioning and navigation systems network (Article 17 and Annex II). The first of these was designed to meet Community objectives and those established by international conventions and IMO resolutions, and covers coastal and port maritime traffic management services, systems for establishing the position of ships and for identifying ships carrying dangerous or polluting goods, as well as distress and safety communications systems. The LORAN-C system and the Global Maritime Distress and Safety System (GMDSS) are particularly relevant. The second, which was not designed specifically for use in maritime transport, involves satellites and radionavigation.

It should be pointed out that the final text of the guidelines does not deal with specific projects. Only those which had already been decided on at the European Council meetings in Corfu and Essen appear in Annex III of the guidelines by way of indication (Article 19). None of these projects, unlike the original Commission proposal, deals with traffic management and control.
CONCLUSIONS

1. Maritime policy and intermodality

In the course of this study, various ideas have been put forward for Community action within the scope of the common transport policy and with the specific objective of promoting the European merchant fleet. These ideas will be re-examined and developed in the following sections.

First of all, it should be pointed out that the crucial phrase in the preceding paragraph is *within the scope of the common transport policy*. Maritime transport is an integral part of this sector of the economy, whose role is to ensure the mobility of persons and goods and where the services provided depend on competition between companies, both public and private, and also on infrastructures which, unlike the companies, are mostly publicly owned.

The common transport policy, as conceived by the Community, is geared towards achieving *sustainable mobility* by means of an *intermodal* system which includes maritime transport. As already mentioned, operators in the sector complain that maritime transport is somewhat marginalized in measures to promote intermodality. It is not appropriate in this document to decide whether such complaints are justified or not. Instead, it should be made clear that the best way to promote the efficiency and competitiveness of the Community fleet and European shipowners at world level is essentially to integrate maritime transport into a Community transport system. This should take place in various ways.

At a physical level, progress has been made in developing *combined transport*, with the increased use of containers and improved port handling equipment. Nevertheless, certain legal and administrative problems still remain: freedom of access to port services - an essential condition for the provision of competitive port services - and simplification of customs and control procedures for goods and persons.

All this raises the question of interoperability, through an efficient *intermodal transport* system which facilitates transhipment from one mode of transport to another (or, more generally, from one vehicle to another). To achieve this type of integration, the times and routes of the different vehicles need to be coordinated in order to minimize delays. This will involve overcoming legal and administrative restrictions, as well as increased use of technology: management and control of traffic through telematics and satellites and, no less importantly, data transfer systems for monitoring freight from place of origin to place of destination by different transport modes.

Sea/river transport is an example of multimodal integration. It allows goods to be carried inland with a minimum number of transhipments. The various forms of short sea shipping also have an important role to play in the process of integration.

The companies involved in maritime transport would almost certainly benefit from combining together to provide a comprehensive transport service through coordination of the different modes.
Integrated maritime transport services within a multimodal transport system would make it possible to use waterborne transport instead of more polluting types of traffic, which would be preferable from an environmental point of view. Increased use of shipping would also lead to lower management costs and greater competitiveness on the part of Community shipping.

2. **Competitiveness of Community maritime transport**

Community shipping is less competitive not because it provides an inferior service, but because of the lower operating costs of other merchant fleets due to lower taxes, wages and levels of social security provision, as well as laxer procedures for enforcing international safety and environmental rules. These problems can be dealt with at international level by more effective implementation of the international rules, as well as through a reduction in Community operating costs.

The *international* aspects will be considered in the next section; here, we shall deal with cost reduction. Most importantly, if maritime transport were to be properly integrated in an intermodal system, users would choose this particular mode in preference to road and rail transport. This would allow a better use of transport capacity, leading to economies of scale and a reduction in the unit cost of transport.

In addition, harmonization of equipment (120) would contribute towards a reduction, albeit a modest one, in ship construction costs and depreciation. The same results would be achieved through cooperation over ship design.

A reduction in personnel costs might be achieved through research and development in the field of marine automation technology. However, any reduction in crew numbers must be compatible with the relevant IMO rules.

In terms of fiscal considerations and personnel costs, European Union harmonization of the rules on registration, which has replaced the EUROS project as far as future Community legislation is concerned, will benefit Member States if it allows them to keep or establish secondary registers that are competitive with open registers. This is a somewhat sensitive issue because of its implications for employment and the likelihood of non-Community personnel being recruited. However, if secondary registers lead to some ships registered under flags of convenience being repatriated, the extra jobs created by a larger number of ships could compensate for a smaller Community quota.

As a last resort, the cost gap can be reduced by state aid, which must be allocated according to criteria laid down at Community level to avoid distortions of competition within the Community. State aid has wider implications, however, including the problem of the ageing of the Community fleet. This is a situation requiring vast sums of money, which could be raised either through increased competitiveness leading to a higher rate of return, or through special financing arrangements or construction aid.

This is an issue which affects some Member States more than others. In some, credit facilities for the maritime sector are far from straightforward, and this, regardless of the tax arrangements, can deter investment in the sector and restrict its competitiveness. Any problem associated with the banking system, however, affects
all the other economic sectors - not just maritime transport - by interacting with the
real economy to reduce efficiency.

3. **International aspects**

Competition, safety and the environment are very sensitive issues because of their
effect on international law in relation to national sovereignty and the exploitation and
development of marine resources. As is always the case with economic issues at
international level, there is a conflict of interest between the industrialized countries,
which are free market oriented (121), and developing countries which are seeking to
protect their own maritime markets. It has already been described (122) how, in the
context of the Montego Bay Convention, the non-industrialized countries tried to limit
the concept of the high seas in order to retain control over resources in the widest
possible area. The same countries also tend to limit the use of their own ports as
ports of origin or destination to liner shipping flying the flag of the terminus states.
When these countries also have open registers, they are enthusiastic defenders of
flag state control against port state control, since under the latter regime, the
advantages they derive from evading safety and environmental controls are
substantially reduced.

Such evasion could be virtually eliminated through the extension not only of port
state control, but also of **coastal state control** to ships in transit. The possibility of
extending these powers to the high seas has already been dealt with in connection
with Eurorep (123). At present, however, port state control only applies to ships in
port, while coastal state control can be exercised where there has been a serious
incident.

Concerted action by the Community in order to change international shipping law in
this way will doubtless be difficult, although it could secure the support of most, if
not all of the industrialized countries by promising to make shipping safer and more
environmentally friendly. Flags of convenience would also lose one of their most
powerful attractions. It should also be borne in mind that the alternative to such
diplomatic action, namely prohibiting access by ships not complying with certain
international rules to the ports of a major commercial power, might be a strong
unilateral incentive to overall improvement (124).

On a purely commercial level, the resumption of multilateral transport negotiations in
the context of the Uruguay Round by 1 January 2000 - the deadline set on 29 June
1996 when they were suspended - is crucial in order to avoid an increase in
protectionist measures. Although the parties present when the negotiations were
suspended agreed to limit restrictive measures to those necessary for self-defence,
this is not really an adequate guarantee.

4. **The maritime industries**

In including maritime transport in the common transport policy, the linkage between
maritime transport and the maritime industries, particularly in terms of shipbuilding
and equipment manufacturing, should not be ignored. For the latter, the proposal for
a directive (125) is an important step towards improving safety, reducing equipment
costs for ships and strengthening competitiveness, not least that of European
equipment manufacturers in the global market, through a standardization of quality
products, guaranteed by a Community mark.
For its part, the shipbuilding industry will have to forgo the benefits of state aid which it is currently enjoying and make good the deficit by means of increased competitiveness on the international market, where the lower labour costs of some extra-Community countries are giving them a competitive advantage over Community companies. The best way to achieve this goal is by safeguarding the future of shipbuilding in Europe through a renewal of the Community fleet. This will resolve one of the problems facing maritime transport, as well as the problem of competitiveness in the shipbuilding sector.

**NOTE ON LITERATURE AND SOURCES**

This working document relies more heavily on the acts and documents of the various public bodies than on the literature.

Firstly, we have referred to the Community documents containing the official acts of the Community institutions, communications from the Commission and European Parliament working documents. The official acts consist of legislative acts (regulations and proposals) and Parliament and Council resolutions expressing their political position. The references are given in the text.

The communications from the Commission, some of which have now become either white or green papers, are documents sent to other Community institutions which play a part in the legislative process, namely the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, for the purpose of highlighting a particular issue and in anticipation of legislative proposals. For the purposes of this document, we have consulted the following communications:

- **A Future for the Community Shipping Industry** (COM(89)266 final) of 3.8.1989, which though superseded is still useful;
- **New Challenges for Maritime Industries** (COM(91)335) of 14.10.1991, which deals with the problems of the maritime industries and their close link with maritime transport;
- **Telematics Applications for Transport in Europe** (COM(94)469) of 4.11.1994, which indicates the broad lines of Community policy on transport integration through informatics and telematics systems;
- **The Development of Short Sea Shipping in Europe: Prospects and Challenges** (COM(95)317) of 5.7.1995, which although confined to one aspect of maritime transport is detailed and well-structured, and provides a general framework. However, the EP is unhappy that it should have gone so far as to include details of a Community policy on ports;
- **EGRET Programme Evaluation** (COM(95)450 final) of 4.10.1995, which gives an overview of the results of recent transport research;
- **Towards a New Maritime Strategy** (COM(96)81 final) of 13.3.1996, which as the most recent document outlining the current state of the sector is of paramount importance;
- **Shaping Europe’s Maritime Future** (COM(96)84) of 13.3.1996, which was approved at the same time as the above document and deals specifically with the areas where maritime transport and other industrial sectors are most closely interrelated.
The Commission entrusts the task of preparing studies, usually for the purposes of developing legislative proposals, to certain specialized institutes. In general, these documents are not published, and access to them is restricted according to their degree of confidentiality. The author was thus prevented from accessing certain documents containing information on management costs for certain types of ships. There is a file for each of these studies in the Commission’s CERES data base.

On the other hand, the working documents of the European Parliament are freely available. These are prepared under the auspices of the Directorate-General for Research, more specifically by one of its own divisions or STOA (Scientific and Technological Options Assessment). In both cases, the working documents are either produced within the Directorate-General or entrusted to outside research institutes.

For information relating to maritime transport and other areas connected with it, the most recent publications and those referred to in this document are as follows:

- **European Sea Port Policy**, Transport Series E-1 1993, available in FR and EN, provides a complete survey of the organization, national legislation and capacity of European ports;
- **Carriage of Dangerous Goods and Pollutants by Sea: The Safety Aspect**, Transport Series E-3 1994, available in IT, FR, EN and DE, deals with this issue in the light of the relevant international rules and provides technical information and an extensive bibliography;
- **The International Dimension of the Common Transport Policy of the European Union**, Transport Series W-6 1994, available in ES, FR and EN, gives an overview of international relations by mode and groups of third countries;
- **The Financing of the Trans-European Transport Networks**, Transport Series W-7 1994, available in IT, FR, EN and DE, reconstructs the different phases of the policy on the networks; a second edition will follow in the first quarter of 1997;
- **The Internal Market and the Common Transport Policy**, Transport Series W-8 1994, available in IT, FR and EN, describes the present state of the internal market in respect of the different transport modes;
- **Ship Traffic Monitoring and Oil Spill Detection by Remote Sensing**, STOA 1994, in EN, explores the issues with particular reference to the Baltic;
- **From European Concepts of Maritime Safety to the Establishment of a European Environmental Coastguard**, STOA 1994, in EN, is a survey of the relevant national and international legislation;
- **Public Service Transport Obligations Towards Rural and Peripheral Regions**, Transport Series W-13, available in ES, FR and EN, gives a survey of public service obligations in the different modes and Member States.

The works of the international organizations with responsibility for the maritime sector, in particular the IMO, have also been widely consulted, together with publications by organizations which deal with maritime transport in a broader economic context, such as UNCTAD (the United Nations Conference on Trade and Development) and the OECD (Organization for Economic Cooperation and Development).

The sources of international regulations are particularly important. In the preparation of this document, we have referred to the conventions in the volume: United Nations
Whereas the Treaty Office of the Dutch Ministry of Foreign Affairs was consulted by telephone for an update on signatures and ratifications after 31 December 1995, the acts of the IMO were requested directly from its London headquarters.

As regards reports by the international organizations, many emanate from the IMO but are of a highly technical nature. UNCTAD publishes an annual report entitled Review of Maritime Transport which examines the sector's economic situation, as well as economic activity at international level. The OECD also produces an annual report, but in more detail, entitled Maritime Transport. Both publications are issued two years after the year to which they relate.

We have made very little use of the vast literature on the subject, which tends to be highly specialized and would have been more useful had this document been either narrower in scope or more fully developed. Among this, particular reference is made to three legal publications written in Italian:

U. Leanza, Nuovi saggi di diritto del mare, Turin (Giappichelli) 1988;

U. Leanza, Il nuovo diritto del mare, Turin (Giappichelli) 1993;

Lefebvre d'Ovidio-Pescatore-Tullio, Manuale di diritto della navigazione, Milan (Giuffré) 1990 (7).

The first two deal with the international legal aspects; the third is a classic Italian legal work which, while dealing specifically with domestic law, nevertheless provides a view that is basically in keeping with the legal institutions and principles common to the states in the area under discussion.

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FOOTNOTES

1. Thucidides, in ancient times, was the first to recognize and develop a theory on the importance of controlling the seas for the purposes of political hegemony, through what was termed *thalassocracy*.

2. The importance of "military protection" should not be underestimated or seen as a relic of the past. In 1991, as a result of the outbreak of the Gulf War, a number of ships left the "flag of convenience" countries in order to re-register with the naval powers.

3. The use of military means does not necessarily involve their actual deployment. It is enough to show that the state is ready to use them.

4. In fact, profitability also depends on repairs and the scrapping of ships. On the basis of the present trend in maritime transport, repairs can be included in
construction, while scrapping of ships occurs when maritime transport is undergoing economic problems. On the other hand a healthy economic situation, while it may be conducive to upgrading the fleet, does not necessarily mean that old ships will be scrapped. Instead, they may be used for secondary services or for storage.

5. Development policy, and particularly food aid, are an important element in maritime transport which, for our purposes, may be likened to public intervention in the agriculture sector.

6. Among the various documents on the subject, the most recent is a Commission communication of 13.3.1996 entitled *Shaping Europe’s Maritime Future* (COM(96)84).

7. See the Commission’s communication of 13.3.1996 entitled *Towards a New Maritime Strategy* (COM(96)81).

8. This definition is taken from the Commission communication entitled *The Development of Short Sea Shipping in Europe: Prospects and Challenges*, COM(95)317, p. A3.

9. The figures given in Table 1 at the end of this chapter are taken from COM(96)84 final, *Shaping Europe’s Maritime Future*, based on Lloyd’s Register of Shipping. These figures exclude ships of less than 100 gross tonnes.

10. Commission communication *Towards a New Maritime Strategy*, COM(96)81, p. 39


12. It has not been possible to verify how the tonnage of operators flying flags of convenience is distributed among the remaining groups of countries in Table 2; it is likely that they are mainly from OECD countries, which have the strictest maritime regulations. If we assume that the total increase in tonnage of countries with open registers can be attributed to operators from OECD countries, this would point to a drop in the latter’s market share. However, the attribution of the tonnage in question to the respective operators is not within the scope of this working document.


14. Figures taken from COM(96)84 final, *Shaping Europe’s Maritime Future*, in turn taken from "Fearnley’s Review".


17. See earlier footnote.


19. Sea/river vessels not requiring transhipment facilities in sea ports are more cost- and time-efficient.

20. European Commission, The Development of Short Sea Shipping in Europe ..., p. 44


22. These figures, which apply to a container vessel of 15 TEU operated by a UK company, are taken from the European Commission's A Future for the Community Shipping Industry, COM(89)266, p. 9 and Annex 5, which in turn quotes from A Social Survey in Maritime Transport, compiled by MERC in 1987. A TEU, a unit equivalent to 20 feet, is a measurement for estimating the capacity of a container ship, based on a standard 20-foot container.

23. European Commission, Towards a New Maritime Strategy, p. 45

24. European Commission, A Future for the Community Shipping Industry, Annex 5, which in turn quotes from A Social Survey ... op. cit. The Community countries referred to are the eleven maritime nations of the EU 12.

25. Traffic with the colonies, and in particular the preferential legal conditions accorded to the French merchant navy for this purpose, as well as obligatory flags for refineries, are dealt with in E. Berlet, Situation du transport maritime français et perspectives (conference paper), in "Transports" 1995 (No 373), pp. 339-40. The author is a General Delegate of the Board of French Shipowners.

26. Towards a New Maritime Strategy, p. 31

27. These ideas were inspired by Berlet's article (op. cit.), in which he regrets that the maritime mode has tended to be neglected in the development of intermodal transport, and also the confused approach of the French banks when it comes to financing the maritime sector. The author draws attention to the greater efficiency of the German banks in this respect.

28. SEC(89)921

29. Towards a New Maritime Strategy, p. 28


31. Association of Western European Shipbuilders, comprising the countries of the European Union and Norway.

33. COM(95)317


37. In addition, of course, to the other general requirements relating to all projects of common interest. The guidelines will be dealt with in more detail in a working document entitled *The Financing of the Trans-European Transport Networks*, which is likely be published by the EP (DG IV) in January 1997.

38. According to the principle of the free movement of workers, Member States cannot impose national crew quotas on ships in their registers. Any such quota must apply to Community workers in general.

39. Poor service here refers to non-compliance with standards relating to safety and environmental protection.

40. This and the following section are largely based on U. Leanza, *Nuovi saggi di diritto del mare*, Turin (Giappichelli) 1988.

41. The codification of the law of the sea has been a long and complicated process which could be said to have started during the Congress of Paris, convened to negotiate the ending of the Crimean War in 1856, at which the Declaration of Paris, containing certain principles of the law of the sea, was adopted. Leaving aside all the conferences convened to mark the end of a series of armed conflicts, where principles governing maritime traffic in time of war were ratified, the most significant step towards codification, from our legal standpoint, took place when the League of Nations codified freedom of transit and the regime for international navigable waterways (Barcelona Conference of 1921), maritime ports and the concept of merchant navies (Geneva Convention of 1923). Following the Second World War, the United Nations organized three conferences on the international law of the sea. The First, held in Geneva in 1958, went some way towards codifying the customary law but did not succeed in defining the limits of the territorial sea. The Second (Geneva, 1960) was convened to deal with the issues left unresolved by the First Conference, and was equally unsuccessful. The Third Conference was held in Montego Bay in 1982.

42. The baseline is a line which generally follows the coastline but from which special land features, such as inlets, estuaries and so on, are excluded. It is from this
line that the breadth of the different zones over which coastal states enjoy particular rights or exercise particular powers is calculated. Defining this line is therefore crucial and was central to both the difficult negotiations that took place during the Montego Bay Conference and the convention of the same name. However, it is outside the scope of this document to enlarge on this issue.

43. Mostly associated with exploitation of marine resources.

44. It is not within the scope of this document to develop the issue of whether the power of policing on the high seas is exercised by states as members of the international community, or whether the power devolves directly on these states from their sovereignty over their own citizens, whereby it is incumbent on them to ensure compliance with international regulations.

45. This and the following section are largely based on Lefebvre-Pescatore-Tullio, Manuale di diritto della navigazione, Milan (Giuffré) 1990 (7).

46. **Tonnage** means the internal capacity of the ship, expressed in tonnes equivalent to 2.832m$^3$. Tonnage can be either gross or net, depending on whether the space not used for cargo (or passengers) is included in the calculation. **Displacement**, as distinct from tonnage, is the difference between the weight of the ship when empty and when it is fully loaded, as indicated by the **load line** which shows how deep the ship may lie in the water. **Gross loading** is the maximum amount of cargo on board, including that needed for navigation (functional cargo) and not charged. **Net loading** is the maximum amount of paid cargo. This may be more or less according to the amount of functional cargo, which generally depends on the length of the voyage.

47. This phenomenon occurred during the Gulf War in 1991.


49. See Chapter I, section 4.

50. For instance the transport of food aid, probably because countries wish it to be known where the aid is coming from. In another example, France obliges its refineries to use ships flying the French flag to carry a proportion of their oil supplies.

51. In particular Towards a New Maritime Strategy

52. These registers date from the intergovernmental agreement of the 1980s between the United States and Liberia. The United States was particularly concerned about the adverse effects caused by flags of convenience on the environment, following the 1967 Torrey Canyon and 1978 Amoco Cadiz disasters, which spread alarm throughout the whole international community. Under this agreement, Liberia lost all its rights over ships flying its flag, which the United States was willing to reinstate under its own flag. The contracting states thus succeeded in combining the economic benefits enjoyed by operators under flags of convenience with respect for
safety standards and the environment. This type of agreement is known as dual flag registration.

53. In 1995, the French Council of State declared the Kerguelen register to be illegal.

54. See Towards a New Maritime Strategy, p. 61.


56. Towards a New Maritime Strategy, pp. 5 and 16

57. OJ L 68, 15.3.1991, p. 1

58. As stated in Article 1 of Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences (OJ L 121, 17.5.1979, p. 1), the Member States which had ratified or acceded to the convention expressed the reservations set out in Annex I of the Regulation. Essentially, they wished to ensure that certain principles contained in the Treaty would not be undermined by the convention.

59. Of particular importance from the Union's point of view is TACA (Trans-Atlantic Conference Agreement), which regulates capacity and prices for North American transport.

60. Statement by Sir Leon Brittan on 1 July 1996, distributed as IP/96/568 by the Spokesman's Service of the Commission.

61. op. cit., p. 20

62. op. cit., p. 21

63. Directive 77/587/EEC of 13 September 1977 setting up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organizations, OJ L 239, 17.9.1977

64. Regulation No 4055/86 of 22 December 1986 on applying the principle of freedom to provide services to maritime transport between Member States and third countries (maritime cabotage), OJ L 378, 31.12.1986, p. 1, which forms part of the maritime package.

65. Regulation No 3577/92 of 7 December 1992 on applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364, 12.12.1992, p. 7

66. The derogations are for the Mediterranean, the Atlantic coasts of Spain and France and cabotage services affecting Madeira, the Canary Islands, the Azores, Ceuta and Melilla, the French islands off the Atlantic coast and the French overseas departments. The only derogation which will continue beyond the end of 1998, up to
the end of 2003, is that relating to regular passenger and ferry services operating between the Greek islands, as well as for all other services carried out by vessels of less than 650 gross tonnes.

67. The reference to EUROS is now obsolete since the plan to set up a Community register has been abandoned, as announced by the Commission (see Chapter II).

68. This condition will not apply until 31.12.1996.

69. This is defined as transport between mainland ports or those of the principal territory (in the case of Ireland and the United Kingdom) of a single Member State, without calling at islands.

70. Ceuta and Melilla are considered islands for the purposes of cabotage.

71. Except for crews of ships which also call at the ports of other Member States, to whom the law of the flag state will apply after 1998.

72. Regulation No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway, OJ L 175, 23.7.1968, p. 1


74. Regulation No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 55, 29.2.1992, p. 3

75. Regulation No 870/95 of 20 April 1995 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between maritime liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92, OJ L 89, 21.4.1995, p. 7

76. A service arrangement means a contractual arrangement whereby a user concludes a transport contract with a shipper who undertakes to provide an individualized service of a given quality. In return, the user undertakes to have the shipper transport a certain quantity of goods over a given time.


78. Regulation No 4058/86 of 22 December 1986 concerning coordinated action to safeguard free access to cargoes in ocean trades, OJ L 378, 31.12.1986, p. 21

79. The normal freight rate is determined taking into account the comparable rate actually charged in the ordinary course of shipping business for the like service on the same or comparable route by established and representative companies, not enjoying commercial advantages; or otherwise the constructed rate which is
determined by taking the costs of comparable companies not enjoying commercial advantages, plus a reasonable margin of profit.

80. (the following may be considered to be compatible with the common market:) (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest ...

81. Towards a New Maritime Strategy, p. 28

82. This approach should eliminate, or at least reduce, direct financial aid.

83. This section has mainly been dealt with by the EP (DG IV) in the working document Carriage of Dangerous Goods and Pollutants by Sea: The Safety Aspect, (Transport Series E-3) 1994.

84. By conduct, we mean any human error committed while performing necessary navigational duties, including those connected with cargo handling, which have been the cause of accidents on numerous occasions.

85. This and the following section are largely based on U. Leanza, Nuovi saggi di diritto del mare, Turin (Giappichelli) 1988.

86. This and the following section are largely based on W. d'Alessio, La sicurezza nel trasporto marittimo di merci pericolose ed inquinanti, EP (DG IV) working document (Transport Series E-3), 1994.

87. Resolutions A.81 (IV), A.120 (V) and A.230 (VII) of the IMO

88. Except where pollution has been caused by a naval vessel. This is also problematic from the point of view of the immunity from the jurisdiction of other states enjoyed by warships, and raises the question of liability to a diplomatic level.

89. Among the various international conventions on civil liability for marine pollution are the following:

- Convention on Civil Liability of Operation of Nuclear Ships (Brussels, 25 May 1962);
- International Convention on Civil Liability for Oil Pollution Damage (CLC) (Brussels, 29 November 1969) and the related Protocol (London, 19 November 1976);
- Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Brussels, 17 December 1971);

90. See preceding footnote.

91. Resolution A.729 (17) of 7 November 1991
92. Article 130r(2) states: *Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community.* The reference to the regional situation could be interpreted as a limitation on the policy's "terrestrial" dimension.


94. **Roll-on/roll-off** is a type of passenger ship which is designed to allow road or rail vehicles to embark and disembark directly and which carries more than twelve passengers. This is the internationally accepted definition for this method of embarkation. For the most part, it applies to passenger ships in which vehicles embark and disembark through doors fore and aft under their own power or, in the case of trains, by means of shunting engines. The minimum requirement of twelve passengers brings the definition into line with the international definition of **passenger ships**.

95. IMO Resolution A.741 (18) of 4 November 1993

96. On 1 January 1998 for Greek passenger lines operating services between Greek ports. A further derogation until 1 July 1997 is envisaged for shipping companies which run services exclusively in protected waters between ports of the same state. **Protected waters** means *areas where the annual probability of the significant wave height exceeding 1.5 metres is less than 10%, and in which a ro-ro ferry is at no time more than six nautical miles from a place of refuge where shipwrecked persons can land* (Article 2(i) of the regulation).


98. COM(95)269; after the first reading, the proposal was amended as COM(96)47, which included most of the amendments approved by Parliament.


100. The **Global Maritime Distress and Safety System** provided for by SOLAS.


104. The bodies to which the directive applies are the **classification** bodies or societies. The qualifications are substantially the same as those stipulated by the International Association of Classification Societies (IACS).

105. See below.

106. At a meeting of the Committee on Transport and Tourism of the European Parliament, some Members suggested that the powers of the port state should be extended to cover ships in transit in waters close to Community territory. This would
have amounted to preventive intervention on the high seas (as we have seen, the power to intervene now applies only to disasters which have already occurred), and was rejected by the Commission as being contrary to current international law. It should be emphasized that no formal amendment was proposed, and that the opposition of the Commission was not expressed by a Commissioner, but by officials present at the meeting.

107. The text of the Memorandum is in English and French. The author has referred to the bilingual version in *Tractatenblad van het Koninkrijk der Nederlanden*, 1982 (59), published by the Dutch Ministry of Foreign Affairs.


111. The name has recently been changed to *Europarep*.


113. This regulation makes it compulsory to build ships with segregated ballast tanks (SBT) in which the ballast water, which is necessary for the safety of the empty tanker, is stored in different tanks from those used for cargo, in order to prevent it mixing with residue from the cargo and polluting the sea when the ballast water is discharged. (In tankers without double hulls, the water contains 5% residue.) A **double-hulled** tanker is a particular type of SBT tanker in which the cargo tank is protected along its entire length by separate tanks or spaces for ballast not used for cargo or combustibles.

114. OJ L 59, 4.3.1992, p. 17

115. OJ C 309, 5.11.1994, p. 1


117. COM(94)469


120. See Chapter IV, section 7.

121. The word *oriented* is used because some adopt a different stance and even create barriers against some maritime transport on environmental grounds.

122. See Chapter II, section 2.
123. See Chapter IV, section 9.

124. This was precisely what the USA did in 1990 when it denied access to its ports to tankers without segregated ballast tanks, as provided for in the relevant IMO resolution (see Chapter IV, section 9).

125. See Chapter IV, section 7.