

EUROPEAN PARLIAMENT

Directorate General for Research

WORKING PAPER

**Outflagging and Second Ship Registers:
Their Impact on Manning and Employment**

SOCIAL AFFAIRS SERIES

SOCI 107 EN

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L-2929 Luxembourg

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Manuscript completed in December 1999.

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4 - 2000

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Introduction

It is important to understand from the beginning that by its very nature shipping is international, and should always be considered unique in the light of International law and the various European Union (EU) policies that are affected by the maritime industry. It is necessary to understand the reasons why shipowners are willing to leave their national registers and register their ships in another country and become subject to the laws of that state. This process has caused considerable damage to the traditional maritime national fleets and has affected the European fleets particularly severely.

An analysis of the International law relating to the registration of shipping is necessary to establish the basis on which ships are registered and the adequacy of those provisions to maintain acceptable standards. International standards are paramount to maintain world trade and competitiveness among participants. The conditions upon which shipowners sail their ships are therefore vital for the health of the industry.

Economics is the main driving force behind how shipowners run their businesses in the bid to increase competitiveness. International law must be able to regulate international standards so that the freedoms advocated are available to all nations. The problem of outflagging poses a threat to those freedoms. Shipowners may have no choice but to seek the most competitive position available or face ruin.

Member States of the EU have reacted in a number of ways to the phenomenon of open registries. The most direct is in the form of state subsidies. The EU has reacted in a favourable way towards subsidies, recognising shipping as a special case. The status of shipowning interests in the national fleet is vital for the prospects of seafaring opportunities. Where the national registers of the EU are favourable to the shipowner conversely there should be, theoretically, also healthy prospects for seafarers of the Member States.

The EU has made several attempts to formulate a strategy to protect the EU fleet and the maritime industries, and has made several efforts to formulate a maritime policy. Finally, policy towards a strategy for shipping has involved integration into other areas of policy. The current strategy influencing shipping internationally is that concerning port state control and the enforcement of safety standards. Social policy is also important to create the conditions where national merchant fleets are able to employ nationals of the Member States and maintain the principles of free movement.

1. The International Law of the Sea - Foundations for the registration of shipping

1.1. Development of UNCLOS

Maritime transport around the world is governed by International law. The United Nations Convention on the Law of the Sea 1982 (UNCLOS)¹ is perhaps the most important. It covers all aspects of ocean management. It is an instrument that has undergone many years of negotiation and has made a significant contribution to the legal maritime order². Its signatories are not allowed to derogate from its obligations. Once 60 signatories has ratified the treaty it entered into force on the 16 November 1994.

At the time UNCLOS came into force, Iceland was the only industrialised country to have ratified it³. The problem for the industrialised countries was over the provisions relating to deep sea-bed mining outside territorial waters⁴. The Secretary General began a series of consultations from 1990 until 1994. Fourteen meetings took place where the issues of disagreement were resolved for the ratification of UNCLOS.

1.2. Provisions concerning registration of shipping

Under the sections relating to 'Nationality' and the 'Registration of Ships' all states, whether coastal or land-locked, have the freedom to navigate the high seas, to over-fly the high seas, to lay submarine cable and pipelines, to construct artificial islands and other installations permitted by International law, to fish and to conduct scientific research⁵.

Every state, coastal or land-locked, has the right to sail ships flying its flag⁶. "Every state shall fix the conditions for the grant of its nationality to its ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship. Every state shall issue to ships to which it has been granted the right to fly its flag documents to that effect."⁷

A ship can fly only one flag of a state, except where granted by International law, and is subject to the exclusive jurisdiction of the flag state when on the high seas. A ship can not change its flag while on voyage or in port of call, except where there is a change in ownership or a change of registry. "A ship flying the flag of two or more states, using them according to convenience,

¹ UNCLOS was signed in Montego Bay, Jamaica, 10 December 1982.

² United Nations General Assembly Distr. General, A/48/950, 9 June 1994, Report of the Secretary-general on the "Law of the Sea".

³ WWF *Introductory Guide to the UN Convention on the Law of the Sea (UNCLOS)*, internet 25/1/99, www.clark.net/pub/diplonet/los_guide.html.

⁴ Part XI UNCLOS, A new institution, the International Sea-bed Authority was created to regulate activity in the "Area" outside territorial waters. The "Area" refers to resources in the open sea as "the common heritage of mankind". A consequence of the new authority is that states can only exploit the resources under the governance of an internationally agreed system that involves sharing resources and technology.

⁵ UNCLOS Part VII, Article 87.

⁶ *Ibid.*, Article 90.

⁷ *Ibid.*, Article 91.

may not claim any of the nationalities in question with respect to any other state, and may be assimilated to a ship without nationality."⁸

Every flag state has the duty to "effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag". Every state must maintain a register of the names of the ships and "assume jurisdiction under its law over every ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship."⁹

"Every state shall take such measures for ships flying its flag as are necessary to ensure safety at sea regarding the construction, equipment and sea worthiness of ships, the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments, the use of signals, the maintenance of communications and the prevention of collision."¹⁰

1.3. Need for international law for the registration of shipping

1.3.1. Abuse of the genuine link requirement

We have seen that a ship is protected by the laws of the state to which it is registered. The state under International law has obligations concerning jurisdiction over shipping under its register by maintaining a 'genuine link' in the control over it. This 'genuine link,' however, is open to interpretation. In the bid to reduce costs to maintain competitiveness in the shipping market some countries have taken advantage of this and set up registries with a relaxed interpretation of the 'genuine link' principle.

1.3.2. 'Flags of Convenience' and 'Flagging-out'

There are a variety of reasons why shipowners have registered or re-registered their ships in another shipping registry to fly, most likely, a flag other than their own. This process is known as 'flagging-out'. The maintenance of competitiveness in the world shipping market is the most important reason for flagging-out. Crewing costs can be reduced by employing crews from countries where crew costs are considerably lower. The difference in crew cost between a traditional registered ship and an open registered ship is small but vital for competitiveness in the shipping market¹¹.

⁸ UNCLOS Article 92.

⁹ *Ibid.*, Article 94 (1) and (2).

¹⁰ *Ibid.*, Article 94 (3).

¹¹ Schelin, J., "EC shipping Policy - The 17th Nordic Maritime Conference 2-4 September 1996", *State Aids and the operation of ships: International ship registers*, p. 54, an example can be seen by the operation of a modern VLCC-tanker under Swedish and Liberian flags. The difference in crew costs is estimated at 6-8 million SEK or 7-9 hundred thousand Euro per year. Spruf, J., *Ship Management*, 1994. Another example of cost saving can be found comparing European, Indian and Chinese crews on a similar ship. On a vessel of 24 crew members where the crew are Northern Europeans, 10 officers and 14 unlicensed seafarers, the monthly cost is \$80,000. Where the same ration crew is Indian, the monthly cost is \$41,000. Where the same ration crew is Chinese, the monthly cost is just \$21,900. The difference between the Chinese crew and the Northern European crew is \$58,000 per month and \$698,400 per year.

This activity was originally known as "Panthonlib", pioneered by the United States of America (US) and Norwegian shipowners. Panama, Honduras and Liberia were willing to offer their registries where they could offer benefits, such as enabling the cutting operating and crew costs by putting their ships under their flags¹². Competition in the world freight market required, as a matter of survival, US shipowners to find new registries. European shipowners soon had to follow. These registries are now known as 'flags of convenience' or open registries. Today, shipowners of the Western World can not compete in the world freight market unless their ships are registered in open or international registries¹³.

The Maritime Transport Committee of the OECD in their paper "Study of the Expansion of the Flags of Convenience and of Various Aspects Thereof", defined a flag of convenience as "...the flag of such countries whose law allows - and indeed makes it easy - for ships owned by foreign nationals or companies to fly those flags in contrast to the practice in the maritime countries where the right to fly the national flag is subject to stringent conditions and involves far reaching obligations".

1.3.3. Consequences of flag of convenience shipping to the shipping industry

There are a number of consequences flag of convenience shipping has on the traditional maritime countries. The influences of the traditional maritime nations in the shipping markets are diminishing and are increasingly dependent on foreign shipping to export their goods. The existence of the whole industry is affected. The shipping industry is extremely mobile and can move operations quite readily. Cheaper crews, mostly from the Far East, have an effect on the number of competent seafarers of the traditional maritime nations, and especially those in Europe. In recent years flagging out has spread throughout the traditional maritime nations to such an extent that their national fleets have reduced dramatically. In 1950, 6.6% of the world merchant fleet was registered in a flag of convenience. In 1970 this had risen to 25% and now in the 1990s 43% of the world merchant fleet is registered in flag of convenience registries¹⁴.

1.4. The move towards an International Convention

Flags of convenience were unsurprisingly criticised by the traditional maritime nations. They had to operate their ships under their own national flags, manage their fleet from their country and crew their ships with their nationals. High profile accidents involving flag of convenience shipping called into question the safety standards and inspection procedures of the flag of convenience shipping authorities. The Liberian and Panamanian fleets, however, became some of the biggest in the world that not only gave them an important source of revenue but also gave them status in the maritime world allowing Panama and Liberia to gain membership of the International Maritime Organisation (IMO).

In 1971, concerned for the competitiveness of their fleets, ministers from the Consultative Shipping Group in Tokyo discussed concerns for lowering safety standards and social benefits of

¹² Farthing, B., *International Shipping: An Introduction to the Policies, Politics and Institutions of the Maritime World*, 1987, pp 141-145.

¹³ Schelin, J., "EC shipping Policy", *op. cit.*, p. 54.

¹⁴ *Ibid.*

the flag of convenience fleet and the effect flags of convenience were having on the competitiveness of their fleets. They claimed that flag of convenience registration was contrary to the Geneva Convention on the High Seas 1958. The UN Convention on the Law of the Sea 1982 later confirmed this position. Both Conventions require the 'genuine link' principle to be observed between flag states and their ships.

In 1974, the Shipping Committee of the United Nations Conference on Trade and Development (UNCTAD) secretariat adopted Resolution 22(IV) on Economic Co-operation in merchant shipping and began a study on the growth and the competitive nature of open registries¹⁵. It produced a report entitled "Economic Consequences of the Existence or lack of a Genuine Link between Vessel and Flag Registry"¹⁶. An ad hoc intergovernmental working group was established and asked by the Shipping Committee to report on the economic effects of the existence or non-existence of a 'genuine link' between flag states and their ships. They reported that "the expansion of open registries has adversely affected the development and competitiveness of fleets of countries which do not offer open-registry facilities, including those of developing countries".

In 1979 UNCTAD published two reports¹⁷. They recommended the redistribution of world shipping through cargo sharing and the elimination of flags of convenience by the year 2000. In 1980 the UNCTAD shipping Committee convened two special meetings on the 'phasing out' of open registries.

Support for their elimination was however rapidly disappearing and subsequent meetings discussed whether flags of convenience should be eliminated, phased out or just controlled, and therefore what conditions would be required. Countries who had open registries were concerned for the future of their fleets, and Group B nations¹⁸, originally against the idea, began to reconsider their position. Due to severe overtonning, low freight rates and rising crewing and operating costs, the traditional maritime world, and some of their governments, also began to consider the cost cutting benefits of 'flagging out'¹⁹. Consensus agreed that all parties did not want sub-standard operations or low safety standards. Finally the committee recommended the holding of a conference on the adoption of a convention on the conditions for the registration of ships providing rules for the establishment of the registration of ships and the mechanisms by which open registries could be transformed into normal registries. In response, the General Assembly called a plenipotentiary conference with the purpose of adopting an International agreement for the conditions under which vessels should be accepted under national registries. Between 1984 and 1986, three meetings were called, held in the Ivory Coast. The idea of open registries was becoming acceptable. Agreement was reached over an effective maritime

¹⁵ Under paragraph 3 of the Resolution the Committee considered that the matters of shipping policy" may also be suitable and ripe for harmonisation: the economic consequences for international shipping of the existence or lack of a genuine link between vessel and flag of registry as explicitly defined in International Conventions in force, and requests the UNCTAD secretariat to undertake an examination of this matter as soon as possible". Powers, V.J.G., *EC Shipping law*, UNCTAD Shipping Committee of Enquiry, 1988, p. 198.

¹⁶ It pointed out that Article 5 of the Geneva Convention on the High Sea did not provide "an effective remedy to deal with the practice of registering merchant vessels in countries that may not be in a position to exercise effective jurisdiction and control over such vessels". *Ibid.*

¹⁷ 'The Repercussions on Phasing Out Registries' and 'Legal Mechanisms for Regulating the Operation of FOC Fleets'.

¹⁸ The OECD countries (Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, Turkey and the USA and all the EU Member States) make up the Group B nations.

¹⁹ Farthing, B., *International Shipping, op. cit.*, p. 143.

administration, the proper machinery for registration and effective control, appropriate legislation in the flag state and on those who have responsibility for the vessels, and over the effective means of identification and accountability. Issues of contention were still manning, management, equity participation or ownership and the central elements of the 'genuine link' principle²⁰.

1.5. The Convention on the Registration of Ships 1986

On the 7 February 1986, the Convention on Conditions for Registration of Ships was unanimously agreed by the one hundred members of the UN. The European Parliament summarised the Convention as relating to:

- a "definition of the powers and responsibilities of national shipping authorities with respect to a number of problems concerning exercise of their jurisdiction and supervision over ships registered in the state whose flag they fly;
- mandatory updating of national shipping registers and documents specifying the identity of the owner, operator, or other persons in charge;
- specifying the proportions of owning interests and/or crew complements to be accounted for by nationals;
- definition of the role of the flag state, especially as regards involvement of nationals in the management of ship owning companies;
- detailed guidelines on conditions of chartered ships, joint ventures between shipping companies from different countries, and protection of the interests of countries that supply labour."²¹

On the issues governing the interpretation of the 'genuine link' principle a compromise was reached. On issues of management it was agreed a company that owns a ship has to be established in the state of the flag or have their principle place of business in that state. The company must have a representative or manager in the state of registration and he or she must be of the nationality of the state of registration. The representative or manager must be able to meet any financial obligations that arise. On issues of manning and ownership a choice can be made between meeting manning standard or ownership standards or both as long as the appropriate standards are observed and there is effective control exerted by the flag state concerned. The ownership of the ship need not be a national, individual or corporate body. On manning, there must be a 'satisfactory' number of officers and crew that are nationals of the flag state. The owners are allowed to take into consideration the availability of seafarers and sound and economic viability of the running of the ship²².

²⁰ *Ibid.*

²¹ Powers, V.J.G., *EC Shipping law, op. cit.*, 1988.

²² Farthing, B., *International Shipping, op. cit.*, p. 145.

1.6. The types of registries

At present there are now four types of registry to which a ship owner may register ships. There are traditional home registries, traditional open registries, offshore registries, and international registries.

1.6.1. Traditional home registries

The requirements of traditional home registries have developed through hundreds of years of protectionism and promotion of the national fleet. Today ships under the home registry require the owner and/or the manager to be a national of the registered state and/or manned by a crew resident in the state of registration.

1.6.2. Traditional open registries

These registers include Antigua and Barbuda, the Bahamas, Bermuda, Belize, Burma, Canary Islands, Cayman Islands, Cook Islands, Costa Rica, Cyprus, Gibraltar, Honduras, Lebanon, Liberia, Malta, Maldives Islands, Marshall Islands, Mauritius, Netherlands Antilles, Panama, Seychelles, Somalia, St. Vincent, Sri Lanka, Tuvalu and Vanuatu²³.

Registration qualifications are relatively lax and allow for the creation of a 'genuine link' to the registry country to be made quite easily. Transfer from the owners option of registry is not restricted and registration may be carried out from a Consul's office. Non-nationals may have ownership and/or control of shipping in an open registry. A shelf company may be set up to facilitate the 'genuine link' and the main operations run out of another country. The Liberian and the Marshall Islands registers, for example, are run out of an office in Reston, in the United States of America and the Panamanian registry is based in Manhattan in the United States of America. Restrictions in matters of safety, environment and employment are very few. The manning of the ships by non-nationals is freely permitted. Open registry countries are only small powers making enforcement of safety standards often unachievable. They may have insufficient power and no administrative machinery to effectively impose international regulations and government provisions. The country may not wish to impose any restrictions. Open registry countries are small powers and open registries provide them with an important source of revenue. The receipts may be small but the large quantity of tonnage may produce a substantial effect on the national income and the balance of payments. A registration fee, based on tonnage, and an annual fee are usually the only charges made. There are usually no taxes levied and a guarantee or understanding is agreed as to future tax arrangement may also be given²⁴.

²³ Singapore, Hong Kong and the Philippines all operate registration on a ship by ship basis but offer the same benefits as the open registers. The Philippines register foreign owned which are bareboat chartered to the Philippines. Singapore registers foreign shipping without approved agreements.

²⁴ Powers, V.J.G., *EC Shipping Law, op. cit.*, p. 176.

1.6.3. Offshore registries

There is widespread employment of non-national seafarers in the merchant fleets of the UK, the Netherlands and France. Shipowners can register their ships under the national flag but are able to operate their ships with a high degree of flexibility concerning production and employment conditions. The state retains administrative control over the ship that operates under conditions similar to those preferred by the open registries. The aim is to be as competitive as open register operators. Offshore registries can be more restrictive than open registries but also more flexible than the traditional registry. Offshore registries are based in dependent territories or colonies and are designed to attract the fleet of the particular state. The right to fly the flag of the state remains but with the added advantages of benefits such as tax privileges and choice of crew.

Examples of such registries are Bermuda, the Cayman Island, and the Isle of Man of the United Kingdom, the Kerguelen Islands of France, the Netherlands Antilles of the Netherlands, Luxembourg for Belgium, and the Faroe Islands for Denmark.

French shipping on the Kerguelen Islands register offer operators of dry bulk carriers the ability to employ 75% of the crew as non-French personnel. This has however been declared contrary to French law and is illegal to discriminate against French seamen. Ships from the Canary Islands or the Isle of Man can fly the Red Ensign, the flag of the British fleet, and have fewer restrictions placed upon them than a ship registered in the UK. All its crew including the master can be of any nationality. The ships however can not visit a UK port. The Isle of Man registry offers low corporate and personal taxes with the ability to employ low cost crews from the third world. One third of British shipping is registered in offshore registries²⁵.

1.6.4. International registries

To counter the trend of the reduction of the national fleet some European countries have established international registries. International registries are second national registries allowing ships to fly the flag of that state²⁶. They are still subject to strict rules concerning ownership²⁷, management²⁸, manning²⁹ and operation but these rules are not as strict as the original registry.

²⁵ *Ibid.*, p. 177.

²⁶ The International registers of Denmark (DIS), Germany (GIS), Norway (NIS) and Finland (FIS) are also second registers, as are the Isle of Man (UK), Kerguelen (France), Luxembourg (for Belgian shipping only), Madeira (Portugal), the Canary Islands (Spain), the Netherlands Antilles (Holland).

²⁷ The Norwegian categories for ownership, for example, are fourfold. The owner can be a Norwegian subject, a partnership with unlimited liability, a limited partnership or a limited company. Six tenths of those who make up the partnership must be Norwegian subjects and hold at least six tenths of the liable capital and at least six tenths limited liability of that capital. A limited company must have its head office and board of directors in Norway and subjects of Norway. The chairperson of the company must have been resident in Norway for at least 2 years. Six tenths of shares in the company must be owned by Norwegian subjects who are able to exercise six tenths voting rights in the company, *Guidance for the Norwegian International Ship register*, Internet: <http://www.nis-or.no/guidance.htm>.

²⁸ The Norwegian NIS requirements for the management of the vessel to be in Norway means in either technical or commercial management of the vessel. Four major considerations must also be fulfilled concerning restrictions as to type of ship, trading area limitations, requirements based on type of ownership and the operation of the vessel. *Ibid.*

The national registry often becomes of less regulatory importance and the standards of the International registry become main. The Danish international registry has 92% of the total tonnage of the national fleet, the German International registry has 76% of its fleet, and Finland has 50% of its fleet³⁰.

With the aim of preventing existing registered vessels on the original register from having to re-register in an open registry and attract back those who flagged out, manning costs, for example, are reduced to a competitive level. Shipowners are permitted to employ foreign crews on local collective agreements. The foreign crews are then relieved of requirements to pay income tax and social security contributions³¹.

The Danish and Finnish international shipping registries are open to shipping owned by their nationals or by foreigners providing their citizens have a major influence over the ships' activities and operation, bareboat registrations for example³². The labour laws of Denmark and Finland solely apply under their respective registries but the ship owner is permitted to employ foreign crews from the Far East on Far East collective agreements. The German International register on the other hand requires that a proportion of the crew must be EC citizens, thereby making the possibility of employing Far Eastern crews harder. It does however permit the shipowner to negotiate conditions of work that are governed by the law of the country of domicile. This is perceived as a major advantage to the ship operator as long as the collective agreements agreed do not violate ILO regulations for which Germany is signatory.

All crew members, national and foreign, and domicile in Denmark or Finland respectively are relieved of obligations to pay income taxes or social security contributions. The crews of German and Norwegian registered ships are not exempt from payments. Shipowners registered on the Danish international register are relieved of having to pay on behalf of all their crew income tax and social security contributions. Finnish shipowners are not excused of such payments but are refunded the payments later. Shipowners whose ships are registered on the German International register are not entitled to relief. Norwegian shipowners, on the other hand, receive 19% of the cost of crewing a full Norwegian safety crew direct from the government³³.

Seafarers on board vessels registered in both the Danish and Finnish international registries are entitled to social security benefits and income tax benefits as if they had paid them. Indirectly this is a form of state aid in subsidising seafarers on board vessels in the international register and exempting them from charges arising out of the tax system. Seafarers on board vessels registered on the German International Register are entitled to social security and income tax benefits as prescribed by German Public Law³⁴.

²⁹ For example, regulations that came into force on 1.1.1994 guarantee the payment of wages and passage home for employees of NIS shipping of a certain size in the event of the employer going bankrupt or going into liquidation.

³⁰ Commission Communication, "Towards a New Maritime Strategy", COM(96)0081, p. 10.

³¹ Schelin, J., *EC Shipping, op. cit.*, p. 55.

³² Bareboats are ships placed on foreign registers while the ship is leased out.

³³ *Op. cit.*, p. 55.

³⁴ *Ibid.*

The success in the combination of state aid and international registries has been mixed³⁵. The establishment of the Danish international shipping registry is a good example of success where 80% of seafarers are of Danish nationality on board Danish registered ships³⁶.

³⁵ *Towards a New Maritime Strategy, op. cit.*, p. 10.

³⁶ *Ibid.*, p. 56.

2. European Union law relating to the Common Transport Policy (CTP)

2.1. Status in the Treaty

The legal framework concerning maritime transport can be found in the Treaty of Rome. It requires the activity of the EU to include "a common policy in the sphere of transport"³⁷. The objectives are for the council to lay down "common rules applicable to international transport..., conditions under which non-resident carriers may operate transport services within a Member State[,] measures to improve transport safety[,] and other appropriate provisions"³⁸. Maritime transport is expressly excluded from these provisions³⁹, but "[t]he Council may acting by a qualified majority, decide whether, to what extent and by what procedure, appropriate provisions may be laid down for sea and air transport"⁴⁰. This special status is due to recognition of its international character and of the quantity of international law and regulation regarding maritime transport⁴¹.

Even though the Council may not change the status of maritime transport under Article 84(2) "it remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty"⁴². When France did not comply with the judgement of the ECJ in *EC Commission v France* [1974], the Commission brought action in the case of *Commission v France* [1996], C-334/94. The court held in its judgement that "...retaining in force laws, regulations and administrative provisions restricting the right to register a vessel in the national register and to fly the national flag to vessels more than half the shares in which are owned by natural persons of French nationality or which are owned by legal persons having a seat in France or legal persons proportion of whose directors, administrators or managers must be French nationals or, in the case of private limited companies, limited partnership, more than half of whose capital must be held by French citizens or all of whose capital must be held by French persons who fulfil certain conditions, the Republic has failed to fulfil its obligations under Articles 6, 48, 52, 58 and 221 of the Treaty, Article 7 of Regulation No 1251/70 and Article 7 of Council Directive 75/34".

In the opinion of the Advocate General Fennelly, under the principles of the freedom of establishment registration rules discriminating on the grounds of nationality are prohibited, specifically those relating to rules requiring particular nationality of the owners or charters of a vessel. It is also contrary to article 221 on equal treatment of member state nationals regarding participation in the capital of companies. It is also contrary to Article 52 on registrations requirements on the domicile in the Member State of natural persons⁴³. The fundamental freedoms that form the foundations of the legal order of the EU therefore apply⁴⁴. The provisions on the Free movement of Workers prohibit discrimination between nationals of the

³⁷ Article 3(f) TEU

³⁸ *Ibid.*, Article 74.

³⁹ *Ibid.*, Article 84(1)

⁴⁰ *Ibid.*, Article 84(2).

⁴¹ Bull, H.J. and Stemshang, H. (eds.), *EC Shipping Policy - The 17th Nordic Maritime Law Conference 2-4 September 1996*, 1997, p. 21.

⁴² Case 167/173 *EC Commission v France* [1974], C-334/94, *EC Commission v France* [1996] I-1342.

⁴³ *Ibid.*, I-1324.

⁴⁴ See Article 6 TEU.

Member States regarding matters of work, employment and remuneration. The provisions concerning the freedom to provide services⁴⁵ and competition rules⁴⁶ also apply.

2.2. European Union Maritime Transport Policy

The European Union's Common Transport Policy (CTP) is not at all comprehensive and is reactionary to the decline of the EC fleet and standards of some of the World's shipping in general. A transport policy was not very important until the EEC expanded to include the island nations of United Kingdom and Ireland. By this time the economic advantages of open registries had caused the decline in the EC merchant fleet to begin. There was a considerable growth in all principle fleets. There was also an increase in the tonnage size of ships concerned. The percentage growth of the EC fleet rose a little between 1970 and 1986 but was to a lesser degree than the corresponding percentage increase of world tonnage or the other principle fleets. This indicates that the process of decline of the EC fleet began much earlier⁴⁷. The COMECON⁴⁸ fleets grew by a much lesser degree than the rest of the world⁴⁹ while the Far Eastern and open registry fleets increased significantly compared to all other fleets. This implies that their competitiveness significantly improved as a result of more attractive labour and operating conditions⁵⁰.

With the aim of protecting their fleet, countries provided subsidies. This resulted in, at a time of recession, a continued growth in the world fleet during the period 1975-1980 despite the oil crisis of 1973. Since the second oil crisis of 1979, however, there has been a sharp decrease in the EC fleets and to a smaller extent the COMECON fleet in terms of fleet and tonnage. The fleets of the Far East, open registry and the rest of the world have grown. The world tonnage has decreased but the number of ships has increased. The misfortune of the EC fleet must be attributed to the prolonged depression in the world freight market that accentuated the effects of protectionism and subsidies, the accessibility of lower operating and labour costs and the ability of competition in the cargo market⁵¹.

Although the EC fleet has got smaller the size of its ships have got bigger. Seafarers of the traditional maritime nations have decreased and been replaced by low cost third country crews. Proportionally the biggest decreases are European. In the 1980s, nearly 30% of the open registry world tonnage was owned by EC shipowners, particularly from France, Germany, Greece, the Netherlands and the United Kingdom, 21% by Greece alone. Greek shipowners have suffered no decrease in their total world capacity, at about 14%. Dutch, German, French and British shipowners have only suffered a small decrease⁵².

⁴⁵ The Council also has to act to bring maritime and air transport measures within the provisions of Articles 74-84.

⁴⁶ Competition provisions of Articles 85-90, relating to undertakings and articles, and 92-94, which relate to state aid provided by governments of Member States.

⁴⁷ Berdima-Savopoulou, A. and Tzoannos, J., *The Common Shipping Policy of the EC*, 1990, p. 8.

⁴⁸ The COMECON nations are Albania, Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, U.S.S.R, Vietnam.

⁴⁹ This is probably due to declining resources.

⁵⁰ *The Common Shipping Policy of the EC*, *op. cit.*, p. 8.

⁵¹ *Ibid.*, p. 11.

⁵² *Ibid.*

2.3. Development of the Common Maritime Policy

On the basis of a Commission Memorandum of 1973⁵³ and the Commission Communication of 1976⁵⁴, the Commission outlined the objectives of a Maritime Transport Policy. The objectives of the policy were

- to provide shipping services wherever the shipping company is established;
- to safeguard free access to the world shipping market;
- to promote fair competition in the world shipping market;
- to promote the competitiveness of the EC Fleet;
- to recognise developing countries aspirations in shipping activities;
- promotion of social matters of EC seafarers in employment and conditions at work;
- and the maintenance and improvement of safety standards and environmental protection⁵⁵.

Proceedings brought by the European Parliament against the Council for inaction in the transport sector stimulated the Commission to formulate a Community Shipping policy. In its first step the Commission published, among others, a policy paper on Maritime transport⁵⁶.

2.3.1. First stage of the EC shipping policy

This paper was very significant and led the Council to adopt four regulations constituting stage 1 of the EC Shipping Policy. There are four regulations covering the provision of services⁵⁷, the application of Article 85 and 86⁵⁸, unfair pricing practises in maritime transport⁵⁹ and co-ordinated action to safeguard free access to cargo in ocean trades⁶⁰. The Council stated these regulations represented only the first stage in the development of a shipping policy. Although the regulations did not halt the decline in the EU fleets they were a welcome first step towards a Community maritime policy⁶¹. The Council also suggested that the Commission submit proposals, among others, on fiscal, social and technical measures needed for the promotion of the community fleet.

⁵³ Commission Memorandum, "The development of a Common Transport Policy", COM(73)1725 final.

⁵⁴ Commission Communication, "The Scope and Content of a Common Maritime Policy", COM(76)0341 final.

⁵⁵ *Ibid.*, p. 24-25, The only significant legislation to be adopted in this period was Council Regulation 954/79 on the ratification of the UN Convention on a Code of Conduct for Liner Conferences for Member States. The Treaty underlines the principles of the freedom of establishment and the freedom to provide services. Under the Regulations Member States were able to make reservations when signing the Conference Treaty so not to breach the terms of the EEC Treaty.

⁵⁶ Commission Communication, "Progress Towards a Common Maritime Policy: Maritime Transport document", COM(85)0090 final, 14 March 1985. Powers, V.J.G., *EC Shipping Law, op. cit.*, p. 151. Transport Commissioner Mr Clinton Davis thought the proposal should have been less liberal and gone further into labour issues and the flag of convenience problem.

⁵⁷ Regulation 4055/86. This concerned the freedom to provide maritime transport between Member States and third countries.

⁵⁸ Regulation 4056/86. This concerned the application of article 85 and 86 recognising and allowing for the negotiation of maritime matters with third countries on matters on international law.

⁵⁹ Regulation 4057/86. This concerned unfair pricing practices in relation to dumping of maritime services.

⁶⁰ Regulation 4058/86.

⁶¹ *EC shipping law, op. cit.*, p. 158.

The Single European Act provided for decisions on matters of shipping to be decided by majority voting under article 84(2). The aim was to significantly speed up the facilitation of development of the Common Maritime Transport Policy. In 1987 the Commission established a Joint Committee on marine transport⁶².

2.3.2. *The second stage of the EC shipping policy*

With the intention of improving the situation of the EC shipping fleet the Commission published a Communication to the Council entitled "A Future for the Community Shipping Industry: Measures to Improve the Operating Conditions of Community Shipping"⁶³. This was the first paper of two initiating the second stage for an EC shipping policy. They focused on the problems facing shipping⁶⁴. The Commission recognised that the Community fleets were heavily subsidised and put forward proposals for the acceptance of subsidies under certain circumstances. Only those concerning social security payments, those for training and concerning tax regimes were to be allowed, but recognised that subsidies could help the Community shipping under the flags of Member States⁶⁵.

The proposal, initiating stage 2 proposed:

- a Council regulation to establish an EC shipping register providing for a flag to be flown by sea going ships;
- a Commission recommendation for improvement of effective port control;
- a Council regulation for a common definition of a Community ship owner;
- a Council regulation for the transfer of shipping from one register to another within the Community;
- a Council regulation applying the principle of the provision of services to maritime transport within the EC Member State, and
- a regulation concerning block exemptions relating to shipping consortia under EC competition rules.

The initiative was unsuccessful in being delivered as a package. The proposals for the transfer of registration of shipping were adopted⁶⁶, as were the proposals in relation to cabotage regulation⁶⁷, the proposals for block exemptions for shipping consortia⁶⁸, and the proposals on port state control⁶⁹. The momentum for these regulations to be delivered would not have come

⁶² Decision 87/467, OJ L253/20. The second paper was Commission Communication, "Financial and Fiscal Measures Concerning Shipping Operations with Ships Registered in the Community".

⁶³ Commission Communication, "A Future for the Community Shipping Industry: Measures to improve the Operating Conditions of Community Shipping", COM(89)0266.

⁶⁴ Problems were identified as the need for modernisation of the fleet, the causes of the decline, in particular high employment costs, and the adverse influence of the decline on other sectors, such as in damage to the costs for transportation, the effects on employment and the balance of payments and defence.

⁶⁵ Hart, P. et al., *Shipping policy of the European Community*, 1993, p. 19.

⁶⁶ Regulation 613/91, OJ L 168/91, p. 1, on the transfer of registration of ships from one register to another between Member States.

⁶⁷ Regulation 3577/92, OJ L 364/92, p. 7, on the application of the freedom to provide services in maritime transport. Cabotage is shipping traffic reserved for the national flag.

⁶⁸ Regulation 479/92, OJ L 55/92, p. 3, and Regulation 870/95, OJ L 89/95, p. 7, on the application of block exemptions for EC shipping Consortia.

⁶⁹ Regulation 95/21, OJ 1995 L157/1, on the establishing of effective port state control over all shipping.

about if it were not for the prolonged crisis in international shipping and the relative decline of the Community fleet⁷⁰. A series of incidents also contributed to a gradual shift in policy of the Commission.

2.3.3. *The new maritime policy*

After incidents such as the Herald of Free Enterprise disaster of 1987, the Scandinavian Star disaster of 1990 and the Braer disaster of 1993 the Commission concentrated on safety and a safe seas policy. The state of affairs at the time was perceived as unacceptable. In immediate response to these disasters, the Council passed a resolution on passenger safety and adopted a resolution of safety at sea. A Committee of Safe Seas was created to maintain policy to enhance safety, the prevention of pollution at sea, and the elimination and sub-standard operators of vessels and cruises from EC waters irrespective whether they are registered in an EC Member State or not.

The Commission created a permanent dialogue between all parties in industry related to shipping and recognised that there should be a coherent policy on areas of safety, research and development in transport, international competition, and the environment, later set out in the Commission communication "New Challenges for Maritime Industries"⁷¹. The Commission also set up The Maritime Industries Forum to examine the problems facing the maritime industry and to make recommendations to the Commission, Member States, and the industry itself. The Forum consists of representatives of industry, trade unions, research institutes, government, and the EU Institutions. The Forum recognised that there is great potential for development in short sea shipping and emphasised the role it could play in an integrated transport network⁷².

⁷⁰ *The Common Shipping Policy of the EC, op. cit.*, p. 7.

⁷¹ Commission Communication, "New Challenges for Maritime Industries", COM(91)0335 final, 20 September 1991.

⁷² Commission Communication, "Development of Short Sea Shipping in Europe- Prospects and challenges" COM(95)0317, p. A-4.

3. The Safe Seas Policy

The first sea port initiative was taken in 1972. The Commission held meetings with major European ports representatives. In 1981 the Commission presented the European Parliament with a report for a Community sea port policy, the "Carossino Report" on the role of ports in the transport policy and the ten point resolution.

The Commission is aiming to tackle six main areas for quality shipping;

- enforcing international rules;
- the human element;
- making passenger ships safer;
- protecting waters from pollution by ships;
- ensuring safe flow of traffic;
- improved research contributing to the quality of shipping⁷³.

The main core of the Commission safe seas policy is the enforcement of international rules under Directive 95/21. The Directive concerns 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. This is also known as port state control. Further proposals were later set out in the Commission paper "Towards a New Maritime Strategy"⁷⁴ as well as a second paper, "Shaping Europe's Maritime Future"⁷⁵. The papers approach future policy to apply global standards and enhance the competitiveness of the EC shipping sector. The paper "Towards a new Maritime Strategy" officially dropped the proposal for the Community flag, which was to be called Euros, and the proposal for the transfer of ships from one register to another within the Community.

All Member States of the EC have signed the ILO Memorandum of Understanding on Port State Control. It was signed in 1982 at the Regional European Conference on maritime safety. It obliges the signatories to ratify International Conventions on safety of life at sea, standards of employment and accommodation on board ship, and the protection of the maritime environment. The aim of the Memorandum is to ensure that the international standards in the area of safety are implemented and in an effective and harmonising manner. Inspections can therefore be made on all shipping entering European ports and those ships that do not conform to the international convention can be detained until the deficiencies are remedied. A computerised information system is located in St Malo providing inspectors with information in a data bank. These measures were still insufficient to stop the reduction of the community merchant fleet.

3.1. Ratified International Conventions, Protocols and Recommendations

The Seafarers' Hours of Work and Manning of Ships Convention and Seafarers' Wages, Hours of Work and Manning of Ships Recommendations, 1996, revised the Wages, Hours of Work and Manning (Sea) Convention and Recommendations, 1958 (No. 109). The Convention is included

⁷³ Brussels, 17 November 1997, "European Commission launches a campaign for quality shipping in Europe to try and stem the loss of 1,000 lives and 230 vessels a year", Internet on Europe.

⁷⁴ Commission Communication, "Towards a New Maritime Strategy", COM(96)0081 final.

⁷⁵ Commission Communication, "Shaping Europe's Maritime Future", COM(96)0084 final.

into the 1996 Protocol to the Merchant shipping (minimum Standards) Convention 1976 (No. 147). Both Conventions are hence subject to port state control for enforcement. The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), through its supplementary index, now accepts ILO Conventions relating to accommodation of crews, hours of work and manning, seafarers identity documents, workers representatives, health protection and reparation. Member States of the Convention are authorised to rectify conditions on board foreign registered shipping that does not conform to the standards of the Convention. The 1996 Protocol to Merchant shipping (minimum Standards) Convention 1976 is being ratified in to EU law by Proposed Directive concerning the enforcement of seafarers' hours of work on board ships using Community ports⁷⁶.

The Labour inspection (Seafarers) Convention and Recommendations, 1996 relates to flag state control only. The EU obliges the Member States to ratify this Convention. The Convention requires all ships registered in the flag state territory to be inspected at intervals not exceeding three years and annually if possible, and as soon as practicable in the instance of a complaint or other evidence of non-conformity. There are likely to be ILO guidelines established in the near future.

The Recruitment and Placement of Seafarers Convention (Revised) and Recommendations, 1996 revises the Placing of Seamen Convention 1920 (No. 9). Private placing is allowed under licensed conditions. No fees or charges providing for the employment to seafarers are to be borne by the seafarers directly or indirectly. There is to be a register and a procedure for the investigation of complaint.

Other International Conventions ratified are the International Convention on Load Lines, 1966, the Convention on the International Regulations for Preventing of Collisions at Sea, 1972, the International Convention for the Prevention of Pollution from Ships, 1973 (as modified by the protocols of 1978) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995 revised.

3.2. Port State Control

Commission Directive 95/21 has been amended by Commission Directive 98/42⁷⁷. It aims to improve maritime safety by attempting to ban substandard shipping from Community waters. It applies to all merchant shipping and crews using Member State sea ports and terminals and ships anchored off shore or in installation. Effective administration must be maintained by all Member States for the inspection of shipping in its ports or waters. Each Member State is obliged to inspect at least 25% of all ships flying other countries flags which enter their ports. Once a ship is examined it can not be inspected for another 6 months. A list of documents and certificates are inspected and provision is made for more detailed examination if required. Certain categories of shipping are required to be inspected more thoroughly⁷⁸. It is the obligation of the Member State to reveal deficiencies in the course of an inspection and to have them rectified according to the

⁷⁶ See "Proposal for a Council Directive Concerning the Enforcement of Seafarers' Hours of Work on Board ships using Community Ports", (1999/C 42/04) COM(98)0662 final - 98/0321(SYN).

⁷⁷ OJ L 184/88.

⁷⁸ The Directive singles out bulk carriers, gas and chemical carriers older than 10 years, oil tankers being less than 5 years from being phased out according to the MAPOL 73/78 Convention and passenger vessels.

rule laid down. There are rules laid down for follow up inspections and detention of a vessel, and on how the vessel is allowed to proceed to repair yards⁷⁹.

The provisions of port state control should be seen in the light of sea ports, maritime infrastructure and the multi-modal trans-European network legislation. The intense competition resulting from the influences of transport policy with the aim of a balanced and integrated transport system, and the development of inland transport networks in the completion of the internal market, has raised the questions for more co-ordinated approach to port development functioning under the trans-European network. The aim for port operations, including port state control, is full integration.

It is important for Europe's competitiveness in the global economy to have a co-ordinated port operation. More than 90% of the EC trade with third countries are handled by the port sector and 30% of intra-EC trade⁸⁰. A co-ordinated approach is directed to improve port efficiency, involving better procedures, implementation of new technologies and fostering of operations in and between ports, to improve the infrastructure within and around ports for integration into multi-modal networks, and ensure fair and free competition is maintained as advocated under the EC Treaty⁸¹.

The best way to monitor pollution and safety is through port state control. This is embodied in the international SOLAS convention. It embodies that every ship is subject to the port state control of another party. Port state control is directed to verify the validity of ship's certificates. A ship can not sail until deficiencies are rectified where there are clear grounds for believing the conditions of the ship or the ship's equipment do not correspond to the contents of the certificates or with the provision of the Convention. Through its Quality shipping campaign, the Commission is able to monitor the efficiency of the implementation process and to take action if required were there is non-compliance of the safety rules laid down. The International Convention for the Safety of life at Sea 1974 and the International Convention for the Prevention of Pollution from Ships 1973 were adopted by the Commission by Regulation 2158/93⁸².

To be able to enforce port state control, the Commission Directive 96/40⁸³ establishes a common identity card for inspectors carrying out port state control. Where flag state control is inadequate then it is vital to have port state control. Council Directive 94/57, amended by Commission Directive 97/58⁸⁴, on common standards for survey organisations. This requires uniform standards on the national flag nations and port state administrations and survey organisations. The Commission decision has issued a list of recognised organisations that have been notified by the Member States in accordance with the Directive.

⁷⁹ Council Directive 95/21 as amended by Commission Directive 98/42 of 19.6.1998 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 of Ship Safety, Pollution Prevention and Shipboard Living and Working Conditions (Port State Control).

⁸⁰ Report on the Commission's Green paper on sea ports and maritime infrastructure (COM(97)0678 - C4-0022/98), A4-0375/98, Rapporteur Mr George Jerzembowski.

⁸¹ *The future perspectives for European sea ports*, Ports conference, Barcelona, 7 May 1998, Internet: http://Europa.eu.int/search97cgi_cg...emplate=EC_HTML-view.hts&hlnavigate=ALL.

⁸² Commission Regulation 2158/93, OJ L 194/5.

⁸³ OJ L 196/96, p. 8.

⁸⁴ OJ L 274/97, p. 8.

Provisions for the development of effective and sound criteria for Member States shipping registers is required to evolve the establishment and operation of flag state administrations and registries. Registers are seen as an important tool to ensure safety and fair competition. There is a definite negative effect from flags of convenience shipping. This can be seen in light of maritime cabotage. Member States exclusion from the cabotage⁸⁵ provisions has had a detrimental effect. The Commission study conducted for DG IV of the Impact of Regulation 3577/92, shows that these Member States, especially the Spanish fleet, not subject to cabotage provisions, have re-registered shipping in second or open registries⁸⁶. As a consequence and detrimentally shipping in this sector has dramatically increased. A similar effect has taken place on the shipping lines dominated by one country. Many of the seafarers employed by the ferry services between Ireland and the UK are third country nationals. They can be employed at a lower cost to the operator and their seafaring skills are not as good as EC seafarers they replaced⁸⁷. While second registries have had a positive effect on maintaining EC shipping, it has had a detrimental effect on maintaining the EC seafarers and therefore also safety within Community waters. The logical step is deliberalisation of the Cabotage markets⁸⁸. The European Parliament has put forward amendments to a proposal of Council Directive 3577/92 for time to examine the social impact of the liberalisation of Island cabotage and has asked the Commission to submit a report by 1 January 2001⁸⁹.

The result of the liberalisation of the market where there are no exceptions to cabotage, is that shipping operation is open to all Community shipping. Co-operation agreements have developed between companies using regular routes. Specific routes can then remain in service using a sufficient number of vessels, at a desired frequency and avoid rising costs. In the opinion of the shipping companies and the transport authorities the working parameters will remain stable with higher flexibility and geographical and functional mobility. There is however a decrease in the employment sector and in working stability. The trade unions also argue that the qualifications, training standards and salaries will fall and the hours of work will increase. The effects of deregulation will have direct relation to the safe seas and safety at seas regulation.

⁸⁵ Portugal, Spain, France, Italy and Greece were excluded with exemption periods.

⁸⁶ TEMA, Group Consultor, S.A., Madrid, Directorate-General for Research: "Social Consequences of Deregulation and Liberalisation in the Transport Sector of the EU", Working Document *Transport Series*, TRAN 101 (EN), p. 49.

⁸⁷ Railways and Maritime Transport Union (UK), Steve Yandell, Telephone interview Friday 15 January 1999.

⁸⁸ *Op. cit.*, p. 50.

⁸⁹ Report of the European Parliament, "Maritime Cabotage, Manning conditions on passenger craft", A4-0075/99, rapporteur Mrs Anne Caroline McIntosh, Proposal for a Council Regulation amending Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport with Member State (Maritime Cabotage) (COM(98)0251 - C4-0423/0158(SYN)).

4. Safety of life at sea

Part of the initiative for safe sea policy is the policy of safety at sea. Council Directive 94/58⁹⁰ on the minimum training of seafarers requires the standards set out in the IMO Convention on Standards and Watchkeeping, applies to all seafarers on board community registered vessels. The level to which minimum standards are made has been left to the IMO and other relevant international organisations. The EC Directive will then be amended to accommodate any changes. The Council Directive has been amended by Council Directive 98/35/EC⁹¹. It implements the changes made to the Convention on Standards of training and Certification and Watchkeeping for Seafarers 1976 (SCTW) adopted at the IMO Conference in 1995 by the STCW 1995 Convention of ILO. The rules concern the quality of training programs, the issuing of certificates, medical standards and rest periods and the criteria for the recognition of certificates issued to seafarers by third countries. Member States are required to ensure that on board ships the crew are able to communicate with each other, and on board passenger ships, to be able to communicate with the passengers. Member States can detain a ship if the crew are unable to provide proof of the professional proficiency required. Directive 98/35 has introduced common criteria for the recognition of certificates issued by third countries, new provisions for communication requirements on board ro/ro ferries, and the new amendments to implement the port state control provisions effectively.

The working time directive is however outside the remit of the maritime industry because of the special conditions that characterise shipping. An agreement between the European Community Shipowners' Association and the Federation of Transport Workers' Unions, with the help of Governments, employers and unions, ensures that the Directives concerning health and safety protections apply to seafarers as other workers of the EC. A consequence of this agreement is that working hours are able to be capped allowing for legally defined hours of rest periods. The ILO Convention No.180 was adopted in 1996 providing for 14 hours a day and 72 hours a week, or minimum rest periods of 10 hours a day and 77 hours a week⁹². The Commission has proposed a Directive⁹³ insisting that ILO Convention No. 180 should also be applied to third country ships when they operate in EC waters. This is in a bid to prevent further flagging-out⁹⁴.

In training the Commission recognises that "good levels of training of crew and shipmasters backed by a system able to enforce and monitor the minimum internationally agreed safety standards are essential elements of any consistent safety policy". The Commission has also recognised the importance of assistance in training in third country shipping. Under co-operation agreements concluded by the EC with Lomé convention countries, several ASEAM and Latin American countries receive financial assistance for training in many areas of employment and in particular training in the maritime sector.

The Commission has for a long time facilitated programs for the mutual recognition between Member States of professional and educational qualifications. Directive 87/540, originally part of the EUROS program, aimed at mutual recognition of qualifications and licences of seafarers.

⁹⁰ Council Directive 94/58, OJ L 319/94.

⁹¹ Council Directive 98/35, OJ L 172/98.

⁹² White paper on Sectors and Activities Excluded from the Working Time Directive, para 50.

⁹³ Proposal for a Council Directive concerning the enforcement of seafarers hours of work on board ships using Community Ports COM(98)0662 final.

⁹⁴ *ITF News 1/99*, from the Internet: <http://www.itf.org.uk/news/nl/no199/europe.html>.

Denmark and Italy recognise qualifications from all EU Member States, Germany from a competent authority, as long as the holder has a good knowledge of German language, and the UK certificates from British Commonwealth as well as competent authorities in the EU and Norway. The Commission will bring forward proposals on the mutual recognition of qualifications and Health Organisation standards.

Concerning the employment numbers in the maritime industry, there is concern for the deficiency in properly trained seafarers. There is a predicted shortfall of qualified seafarers. Member States have indicated that new recruits are only 25% of the required replacement needs. In response to this predicted shortfall Commission policy is directed to ensure the safe navigation of shipping in EU waters, to preserve the maritime know-how for the industry, and to enforce safety policy by maritime administration and to continue the education of young seafarers. An ageing seafaring workforce is also a problem. As seafarers retire the expertise of the workforce reduces unless there is a sufficient number of new recruits. In the UK it is predicted that 1,000 recruits a year will have to be enrolled for training in order to meet the necessary needs of the future UK maritime fleet. The intake in 1996/7 was only 450 persons⁹⁵. The proposed Maritime Working Time Directive (MWT) lays down the provision concerning hours of work laid down in ILO Convention 180 and further EC provisions which go beyond the limits agreed in International law. The directive is still in its preparatory stages. It should therefore be borne in mind, concerning port state control, Member States have the responsibility for enforcing this Directive.

The concept of a unified labour market under the provision of Articles 48-51 of the EC Treaty, concerning the free movement of workers, secondary legislation under those provisions, is not very well developed in the shipping industry. As we have seen in the European Court of Justice decision of *Commission v France*⁹⁶ the four principle freedoms of the Union are applicable in the shipping industry and to seafarers. The application of Articles 48-51 can be summarised in the following way:

- the free movement of workers and community seamen between vessels under the flags of the Member States;
- employment conditions to the same standard as flag state nationals;
- preference to community seamen vis-à-vis third country seamen;
- "aggregation of periods completed under the legislation of several member states for the acquisition, retention or recovery of entitlement to pensions and other social security benefits".⁹⁷

The rules concerning social security differ from one Member State to another. Social security and income tax can be linked into the state subsidy of the maritime industry to encourage shipowners to remain in national registries.

Certain applications of the general rules of the treaty do not apply, those concerning levels of noise for instance, and rules on social policy concerning new accessions to the Union. The free movement of labour principles do not apply to captains because of their dual functions in both

⁹⁵ *Britain's Maritime Skills - An Audit*, Vice-Admiral Sir Christopher Morgan, The chamber of Shipping - Internet: <http://www.british-shipping.org/MaritimeSkills.htm>.

⁹⁶ Case 1167/73 [1974] ECR 359.

⁹⁷ Berdima-Savopoulou, A., and Tzoannos, J., *The common Shipping Policy of the EC*, *op. cit.*, p. 96.

private and public functions. For obvious reasons nationality rules do not apply to military vessels. It is recognised that the duties towards state operations must be considered.

The Commission has undertaken a number of studies, the most notable of which is the Hollesen study. It studied the national collective agreements on crew's pay, working hours, off-duty periods and labour costs on board EC ships. It was published by the Commission in 1980 and it found that there was significant variation in the rates of pay between crews of comparable positions between Member State fleets. This can be attributed to the particular relationship between individual Member State labour markets and the economies of Member States. It should be noted that the shipping industry is naturally not very friendly to labour movement between Member States. This to some extent is attributable to the variation among Member States to recognise training certificates and requirements for crews to be able to speak the same language on board ship⁹⁸.

These problems make it very difficult to produce a unified labour market for the EC especially when compared to other labour markets where unification has been achieved. It is important that matters relating to the employment of seafarers are on the international level as well as on EC level. The Economic and Social Committee has stated that "a common transport policy must be socially beneficial by catering for transport needs from an overall economic point of view and by helping to improve the living and working conditions of people employed in transport"⁹⁹.

⁹⁸ *Ibid.*

⁹⁹ CES 741/82 of 13 December 1982.

5. Other influencing areas of policy

5.1. The significance of Short Sea Shipping

The Commission intends that short sea shipping be placed on an equal footing with the other modes of transportation and be integrated fully into the multi-modal trans-European network. The focus of policy is to improve the quality and efficiency of short sea shipping services, improve port infrastructure and port efficiency and prepare short sea shipping for the wider world¹⁰⁰. The policy for port efficiency and safety include achieving respect for Treaty rules on state aid through requiring port projects to conform to general principles appropriate to all modes of transport with special conditions relevant to specific ports. Transparency in tariffs is important for port users so that they can make an informed choice as to what service they would like to use. There should be an inventory of all the Member State aid granted by Member States to ports as well as action to improve the financial transparency of the accounts of the participants of the transport infrastructure and services. Finally, there should be guidelines on how to apply the state aid provisions of the treaty to the port sector. The Treaty competition rules will be applied fully. There will also be action to improve the working hours of port operations and introduce 24 hour essential port services where there is a demand.

5.2. The EU and state aid in the shipping industry

The Governments of the EC Member States have in general supported a liberalised policy towards "safeguarding and promoting open trade and a situation of free competition on a fair and commercial basis in international shipping" through the OECD¹⁰¹. Governments also support protectionist measures to safeguard the supply of maritime services in their countries and in the EC generally. These measures vary. In 1986, for example, the governments of France, Germany, Ireland, Italy, the Netherlands and Spain provided their shipping industries with direct subsidies towards the cost of acquiring shipping. Spain, Italy, Portugal and France directed subsidies at operations and additional subsidies to the state controlled shipping industries. There is in all countries some form of provision of subsidy for the operation of services that are unprofitable, such as lines to remote islands.

Despite the subsidies there has been a dramatic decrease in national shipping by national carriers. This is directly due to the phenomenon of open registries. Despite this crisis to the EC shipping industry governments are still continuing with liberal maritime policies and imposing further costs on the national industry. The amount of intra-EC trade by vessels of Member States is still however relatively high. Nevertheless, Member States are turning to parallel registries in the bid to maintain their fleet's competitiveness. This has, of course, created a two-tier system for the operation of ships with either strict management and employment regime or a highly flexible one.

The Commission's Guidelines on State Aid in the Maritime Transport Sector¹⁰² allow for Member States to compensate shipowners for the competitive difference in cost between ships registered in the Union and outside, corporate tax and wage related liabilities. Member States are allowed to exempt shipping from fiscal and social charges or to allow the charges to be

¹⁰⁰ *Ibid.*, p. A-5.

¹⁰¹ *Common Shipping Policy of the EEC*, p. 37.

¹⁰² OJ C 205/97.

reimbursed. Fiscal relief is also available for labour costs in respect for seafarers having their fiscal domicile in a Member State and working on-board EU registered ships.

Under the TEU, EU countries are subject to Article 92. The court of Justice has ruled that all international registries are compatible with the common market¹⁰³. State aid and subsidies in the strictest sense are deemed by the Court of Justice to have the same effect¹⁰⁴. Reduction in social security contributions in favour of certain sectors of a national industry is an infringement of Article 92(1) of the EC Treaty¹⁰⁵. Placing a category of tax payer in a more favourable position than other tax payers by way of a tax exemption constitutes a state aid under Article 92(1) EC Treaty¹⁰⁶. There have been no decisions whether social security arrangements in connection with international registers qualify as exemptions under Article 92 (2-3) and therefore also on their compatibility with the Common Market.

5.3. The Shipbuilding Industry

The Commission position regarding state aid in the shipping industry is also demonstrated in its Communication 'Towards a New Shipbuilding Industry'. It recognises that there must be co-operation on both the national and European level in maintaining competitiveness and also competition on an equal playing field. Subsidies tend to distort the competitiveness of the markets. The Commission would like to see the abolition of state aid in the shipbuilding industry by the year 2001. Other aid will be allowed during a 5 year transition period with the granting of aid for development of companies, social aid in the instances of closure, restructural aid, investment aid for innovation and the purchases of new ships, regional aid, aid for R&D and environmental protection aid.

Aid for the purchase of new ships is not directed at any specific yards. It encourages Member States to link preferential taxation and state guarantees for the purchase of new ships under the requirement that they should be built in a EU shipyard. The aim is to remain within the OECD shipbuilding agreement and to be seen to be working within the safe seas policy, promoting ships which are safe, to a high standard and build in the EU.

EC policy is centred on reducing costs to the shipowner. The Commission has stated that aid in the field of social security and income tax of seafarers which reduce the costs to shipowners, but does not reduce the payments received from the state by seafarers and the operation therefore of respective shipping in the Community, could be compatible with the common market. The guidelines on state aid in the maritime transport sector confirm this position. The Commission recognised the strong and strategic reasons for allowing aid from the state in this sector to

¹⁰³ C-72 and 73/91 Firma Sloman Neptun Schiffahrts AG v Seebetriebsrat Bodon Ziesemer der Sloman Neptun Schiffahrts AG [1993] I ECR 887. The case concerned the German international register enabling shipowners to employ foreign crews paying 20% less wages than they would have to EC seafarers, thereby paying less income tax and social security contributions. This was deemed not contrary to Article 92(1) EC Treaty, the provisions concerning state aid, as the tax system for calculating income tax and social security contributions simply calculated the amounts paid on the same basis as EU seafarer's contributions.

¹⁰⁴ C-30/59 Steenkolenmijnen v High Authority [1961] ECR1.

¹⁰⁵ C-173/73 Italy v Commission [1974] ECR 709, C-209/82 Commission v Italy [1983] ECR 2525 and C-53/83 Commission v France [1983] ECR 3703.

¹⁰⁶ C-387/92 Banco de Crédito Industrial SA now Banco Exterior de España SA and Ayuntamiento de Valencia [1994] I ECR 902.

preserve the European fleet. Aid must however be kept to a minimum so as not to undermine the functioning of the common market while still maintaining the balance between the competitiveness between European and third country shipping¹⁰⁷. It is important to note that while state aid is increasing in the bid to save the national industry the Commission has not approved state aid in this sector and would like to see it reduced in the maritime sector. The Commission appears to class certain categories of public funding outside the remit of state aid. In the port sector public financing of the port infrastructure, in a similar way to the ship building policy, is not considered as state aid and therefore allowed. The Commission will be drawing up State Aid Guidelines for Port Infrastructure¹⁰⁸.

5.4. The Industrial Policy and the Maritime Policy

The relationship of the EC industrial policy with the maritime industry was brought to the forefront with the Commission Communication 'Shaping Europe's maritime future: a Contribution to the competitiveness of maritime industries'¹⁰⁹. It assesses the vital role the maritime industry plays in the industrial policy, its competitiveness of the maritime industries and the high potential for growth, development and technology improvement, which if exploited, could create jobs in Europe. These are some areas in which the Union's industrial policy comes into play:

- "the growth of intangible investment: the Commission intends to pursue its efforts in research and development, particularly in the field of information and technology, while at the same time co-ordinating the various European and national R&D programs and developing vocational training;
- the development of industrial co-operation: co-operation must be improved not only with third countries' industries but also within the European Union itself;
- maintaining fair competition world-wide: the Commission *inter alia*, ensure that the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry is properly implemented, and will strive to remove obstacles to the free movement of European products in third countries;
- modernising the role of public authorities: the commission considers in particular that infrastructure related to maritime transport should be given more importance in the granting of financial assistance. It therefore intends, in its programme to create a trans-European network, to support the improvement of port and port-related infrastructure."¹¹⁰

The enhancement of the competitiveness of EC shipping remains of utmost importance. It was recognised that EC shipping is one of the world's most important sectors with one third of the world fleet controlled by EC companies, 40% of the EC trade is carried by ships with EC interests. There will continue to be an exit of capital and labour from the EC fleet as long as some Member States fail to construct the necessary policy to stay in touch with worldwide trends

¹⁰⁷ Guidelines for the examination of state aids to Community Shipping Companies, p. 4-5. Schelin, J., *EC shipping Policy, op. cit.*, p. 62.

¹⁰⁸ *The future perspectives for European sea ports*, Ports conference, Barcelona, 7 May 1998, Internet: http://Europa.eu.int/search97cgi_cg...emplate=EC_HTML-view.hts&hlnavigate=ALL.

¹⁰⁹ Commission Communication, "Shaping Europe's Maritime Future: A Contribution to the Competitiveness of Maritime Industries".

¹¹⁰ Bulletin EC 3-1996, Industrial Policy 1.3.56.

and standards. It is the "conviction of the Commission that the strict enforcement of a safety policy based on internationally agreed standards will lead to a marked improvement of the competitive situation of ships under EC registers with stringent safety enforcement"¹¹¹.

¹¹¹ *Towards a New Maritime Strategy, op. cit.*, p. A-6.

6. Elements constructing policy for a maritime infrastructure

There are a number of elements to a maritime policy that are relevant to both Member State government and the European Union. First, the element of protectionism a government gives to their shipping industry characterises their commitment. There may be subsidies on the supply of shipping services or restrictions on third country operators in the form of cargo reservations for example. Secondly, the rules concerning employment may restrict the employment of non-national seafarers. There may also be special benefits granted to the seafaring sector in the form of income tax or social security exemption, welfare and training. Thirdly, a second national shipping registry to run in parallel to the original traditional register may be established. This may be in the form of an off-shore register or the establishment of an international register. These registers are not burdened by the constraints of the institutional forces of the national economy. Fourthly, in the area of international affairs, a government commitment to maritime affairs can be seen by the extent national law reflects the international legal obligations under the conventions. Fifthly, the extent to which the shipbuilding industry has influence over the importance to the national economy of the state. Finally, there is a relationship between competition rules and government which may attempt to distort those competition rules¹¹².

6.1. Government philosophy over shipping

The influence a government has over its shipping industry depends on its orientation to the industry. Governments tend either to have a liberal policy or be interventionist about the economic activity in trade relations with third countries. This influence is dependent on the importance of the shipping industry to the economy of a state and the importance of the fleet to defence capability. The strength of the relevant trade unions is also a factor as are shipbuilding interests where the industry is important to the economy.

There is no real data on the figures on the numbers of persons employed on board vessels in the EU countries generated by the maritime activity. Estimates can only be made on the basis of hearsay. As we have seen above, the lack of commitment to the shipping industry has led to decline. Since the 1990s the EC fleet has continued to fall but since 1997 some Member State merchant fleets have begun to stabilise¹¹³. Again those which continue to fall generally have not committed to the shipping industry. In 1986, it appears shipping was not a major industry for the EC Member States. Since enlargement the Nordic countries are an exception. This situation has changed in some Member States.

Attention to the shipping industry would therefore be given special attention by EU governments as a link to other sectors of the economy. There is also no major force in employment opportunities in the shipping industry. Shipping is more important to Greece, Portugal and the UK and less important to Belgium, France and Germany. The Netherlands and Spain provide proportionate weight.

Modern ships are larger and require fewer crews to operate them. Technological advances have affected the number of seafarers needed to crew some of the larger ships. To provide a substantial and realistic comparative it is necessary to analyse the number of ships in which EC

¹¹² *The Common Shipping Policy of the EC, op. cit.*, p. 33.

¹¹³ *Shipping Statistics yearbook 1998*, Institute of Shipping Economics and Logistics, p. V.

domicile shipowners have a controlling interest in shipping of the national flag and in foreign flags. This will show the extent of the EU interests registered in foreign flags and which in turn contribute to the effect on the decline in employment opportunities for EC seafarers. Table 3 gives some indication of the numbers of seafarers employed since 1980.

6.2. A profile of the EC fleet

Shipping tonnage registered in the EC has halved over the period of 1980 to 1988. The EU registered fleet fell to about 15.4% (59 million tonnes) of the world fleet from about 29.7% (117 million tonnes). Every Member State lost tonnage during this period. Much of this loss in tonnage remains in the ownership of EC nationals. Shipowners domiciled in the United Kingdom, Germany, Greece and Belgium have generally flagged out and Italian and Spanish shipowners have tended not to flag out¹¹⁴. Table 1 and 2 show where shipowners have registered their shipping in open registries by country of domicile.

Concerning the age of European shipping, ships are generally older than those outside Europe. They are less safe, in need of an up grade in modern technology and are more polluting and costly to operate. The average age of the Greek fleet for example is 20 years, while the Russian fleet is 18.3 years and the Japanese fleet is 10 years¹¹⁵. Cash flow problems brought on by the prolonged shipping crisis have reduced investment in new vessels. This trend extends around the world but the EU is particularly affected¹¹⁶.

In 1990 the total EU fleet amounted to 7,621 ships over 1,000 grt. Shipping is divided into two groups. The first group consists of bulk shipping, liner shipping, passenger ferries and cruise ships that make up the service category of maritime transport. The second group consists of deep sea and short sea shipping which constitutes the distance category of shipping. Deep sea transport is generally carried out by liner shipping services and short sea shipping is transport between EC Member States, the Baltic states and the Mediterranean excluding transport in the hinterland¹¹⁷.

Bulk transport is organised within a labour intensive free market. Liner shipping is organised through a system of conferences and is highly capital intensive in tonnage and land based infrastructure. Systems of conferences are binding international agreements between shipping companies over the operation of certain shipping lanes. Ore and bulk carriers in 1990 amounted to 1,314 ships representing 17% of the EC fleet and a gross tonnage of 29,969,102. This represents 26.6% of the world's ore and bulk shipping fleet. Between 1981 and 1987 the EC owned capacity fell by 13% and the EC registered ore and bulk shipping fleet fell by 40%¹¹⁸.

¹¹⁴ *EC shipping Law, op. cit.*, p. 27.

¹¹⁵ *Shipping Statistics Yearbook 1998, op. cit.*, p. 229 table 6.21.2, Fleet controlled by European Shipowners according to countries of domicile as of January 1st, 1998.

¹¹⁶ *Op. cit.*, p. 27.

¹¹⁷ "The Common Maritime policy", Directorate General for Research, Working Document, *Transport Series*, W-14, 1996, p. 1.

¹¹⁸ *EC Shipping Law, op. cit.*, pp. 22, 27.

In 1990 the EC fleet held 574 oil tankers amounting to 27,955,854 grt and 20.8% of the world's oil tanker fleet. The EC owned oil tanker fleet fell by about 40% and the EC registered oil tanker fleet fell by 54% between 1981 and 1987¹¹⁹.

The EC share of the world container market has fallen from 36% of the world fleet in 1981 to only 28% in 1987. In 1990 the EC container ship fleet amounted to 442 pure container ships amounting to 9,351,100 dwt. In 1989 this amounted to 33.9% of the world container fleet. This is an area where the EC could make significant development. Fifty-five per cent of the world's general cargo is shipped by container¹²⁰.

The second category of shipping Passenger ferries are generally public services and cruise ships and part of the tourism sector. In 1990 the total number of passenger ships was 504, 33.4% of the world passenger fleet. Over 25% were over 25 years old, and 77% were ten years old or over¹²¹.

6.3. A profile of Member State shipping¹²²

6.3.1. Belgium

From 1970, the Belgium fleet has grown compared to other fleets in the EC but in 1991 much of the fleet, mostly bulk carriers, has moved to the newly created second registry of Luxembourg. As of 1 January 1998, Belgian shipowners have a controlling interest in 4 ships over 1000 gigatonnes (grt) in the national fleet amounting to 11,000 dead weight tonnage (dwt) and with an average age of 15.3 years. One hundred and twenty-two ships over 1000 grt are registered in foreign flags amounting to 3,719,000 dwt with an average age of 13.9 years. Belgian dwt percentage share of the foreign fleet domicile in Belgium was 99.7% foreign shipping. Fifty-two percent of Belgian shipping is registered in Cyprus, Liberia, and Singapore.

6.3.2. Denmark

From the 1970s to 1987 the Danish fleet rose in number and fell. As of 1 January 1998, Danish shipowners have a controlling interest in 372 ships over 1000 grt in the national flag amounting to 6,572,000 dwt with an average age of 12.3 years. One hundred and eighty-six ships over 1000 grt registered in foreign flags amount to 5,410,000 dwt with an average age of 13.2 years. Danish dwt percentage share of the foreign fleet domicile in Denmark was 45.2% foreign shipping. In 1990, about 40% of the Danish shipping were registered in the Bahamas, Liberia and Singapore.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *EC Shipping Law, op. cit.*, p. 44-50, *Shipping Statistics Yearbook, op. cit.*, pp. 229, 225.

6.3.3. Luxembourg

The Luxembourg registry is new. In 1988 Luxembourg registered its first ship and by 1989 two ships were registered. The Luxembourg registry is attractive to shipowners because of its generous fiscal regime, well established financial services centre, low administration costs and mortgages registration system. As of 1 January 1998, Luxembourg shipowners have a controlling interest in 2 ships over 1000 grt amounting to 7,000 dwt and an average age of 9 years.

6.3.4. Finland

As of 1 January 1998, Finnish shipowners have a controlling interest in 99 ships over 1000 grt in the national flag amounting to 1,074,000 dwt with an average age of 13.8 years. Forty-four ships over 1000 grt registered in foreign flags amount to 1,43,000 dwt with an average age of 14.3 years. Finnish dwt percentage share of the foreign fleet domicile in Finland was 64.9% foreign shipping.

6.3.5. Germany

Most of the German fleet is made up of small ships. From 1970 there has been a steady fall in the German fleet. It has a strong container fleet with over a third of the EC's container fleet. As of 1 January 1998, German shipowners have a controlling interest in 488 ships over 1000 grt in the national flag amounting to 7,422,000 dwt with an average age of 7.1 years. One thousand and thirty-eight ships over 1000 grt registered in foreign flags amount to 13,815,000 dwt with an average age of 21.1 years. German dwt percentage share of the foreign fleet domicile in Germany was 65.0% foreign shipping.

6.3.6. France

The French fleet has fallen steadily since 1970. It should be borne in mind that French Parent companies generally flag their vessels in France, about 62.7% of the fleet, or in the French Antarctic Territory, about 10.4% of the fleet. As of 1 January 1998, French shipowners have a controlling interest in 121 ships over 1000 grt in the national flag amounting to 4,294,000 dwt of an average age of 14.3 years. Ninety-eight ships over 1000 grt registered in foreign flags amount to 3,144,000 dwt with an average age of 15.5 years. French dwt percentage share of the foreign fleet domicile in France was 42.3% foreign shipping.

6.3.7. Greece

The Greek fleet is the most important representing one third of the whole EU fleet, \$2 billion per annum of earnings and the second largest tonnage of the world fleet. From 1957 the growth in the Greek fleet was enormous but since 1981 the size of the fleet has fallen by over half. It should be noted that although the tonnage of the fleet has dropped the number of ships has increased. 40% of the fleet has flagged out. As of 1 January 1998, Greek shipowners have a

controlling interest in 837 ships over 1000 grt in the national flag amounting to 42,299,000 dwt with an average age of 19.3 years. Two thousand one hundred and fifty-nine ships over 1000 grt registered in foreign flags amount to 79,013,000 dwt with an average age of 20.3 years. Greek dwt percentage share of the foreign fleet domicile in Greece was 65.1% foreign shipping.

6.3.8. Ireland

Ireland is a very small shipping state. The Irish fleet grew steadily since the 1970s until 1989 and has fallen again since then. As of 1 January 1998, Irish shipowners have a controlling interest in 34 ships over 1000 grt in the national flag amounting to 141,000 dwt with an average age of 8.7 years. Seven ships over 1000 grt registered in foreign flags amount to 17,000 dwt with an average age of 24.3 years. Irish dwt percentage share of the foreign fleet domicile in Ireland was 10.5% foreign shipping. Most of the fleet comprises of fishing vessels, ferries and small freighters.

6.3.9. Italy

Italy is a strong maritime nation. The number of ships has been constant with marginal variation and has more ships than now than it had in 1957 but the fleet has reduced since 1989. As of 1 January 1998, Italian shipowners have a controlling interest in 386 ships over 1000 grt in the national flag amounting to 6,509,000 dwt of an average age of 17.2 years. One hundred and forty-eight ships over 1000 grt registered in foreign flags amount to 4,754,000 dwt with an average age of 17.7 years. Italian dwt percentage share of the foreign fleet domicile in Italy was 42.2% foreign shipping. Most of the fleet comprises of tankers and bulk carriers and passenger vessels.

6.3.10. The Netherlands

The Netherlands is a strong shipping nation specialising mostly in the liner Industry. The fleet has slowly fallen since 1957. As of 1 January 1998, Dutch shipowners have a controlling interest in 378 ships over 1000 grt in the national flag amounting to 2,254,000 dwt of an average age of 9.9 years. One hundred and forty-three ships over 1000 grt registered in foreign flags amount to 2,380,000 dwt with an average age of 15.6 years. Dutch dwt percentage share of the foreign fleet domicile in the Netherlands was 51.4% foreign shipping.

6.3.11. Portugal

The Portuguese fleet was largely state owned until 1989 and the number of ships was relatively stable. Since 1991 however the fleet has almost halved. Portugal has established an off shore registry in Madeira in 1989. As of 1 January 1998, shipowners have a controlling interest in 34 ships over 1000 grt in the national flag amounting to 448,000 dwt of an average age of 17.4 years. Eleven ships over 1000 grt registered in foreign flags amount to 423,000 dwt with an average age of 20.0 years and a dwt percentage share of the foreign fleet domicile in Portugal

was 48.6%. Much of the large fleet comprises oil tankers and large bulk tankers with most of the fleet registered as fishing vessels.

6.3.12. Spain

The Spanish fleet almost doubled in size since 1957-1989 but has declined to half its size of the 1970s. As of 1 January 1998, Spanish shipowners have a controlling interest in 119 ships over 1000 grt in the national flag amounting to 1,421,000 dwt of an average age of 16.9 years. Ninety-five ships over 1000 grt registered in foreign flags amount to 1,759,000 dwt with an average age of 19.3 years. Spanish and a dwt percentage share of the foreign fleet domicile in Spain were 55.3% foreign shipping.

6.3.13. Sweden

As of 1 January 1998, Spanish shipowners have a controlling interest in 167 ships over 1000 grt in the national flag amounting to 1,784,000 dwt of an average age of 16.2 years. One hundred and seventy-eight ships over 1000 grt registered in foreign flags amount to 14,507,000 dwt with an average age of 14.5 years. Swedish dwt percentage share of the foreign fleet domicile in Sweden was 89.0% foreign shipping. Much of the fleet consists of ro/ro cargo vessels, ro/ro passenger vessels and passenger only vessels.

6.3.14. United Kingdom

The United Kingdom fleet has steadily declined since the 1950s. There are now fewer than half the ships today as there were in the 1950s and the tonnage has dropped to less than one third, and one fifth of the amount registered in the mid 1970s. As of 1 January 1998, British shipowners have a controlling interest in 219 ships over 1000 grt in the national flag amounting to 6,310,000 dwt of an average age of 15.7 years. Four hundred and thirty-eight ships over 1000 grt registered in foreign flags amount to 14,898,000 dwt with an average age of 16.1 years. British dwt percentage share of the foreign fleet domicile in the United Kingdom was 70% foreign shipping. The United Kingdom has traditionally specialised in liner shipping. The fleet is strong in the tanker, cargo and passenger sectors.

6.4. Analysis of Member State action

6.4.1. Importance of shipbuilding

In Belgium, the shipbuilding industry is more important to the Belgian economy than the merchant marine. This is also the case in France in terms of jobs. The French government encourages shipping companies to build their ships in France. France, Greece, Ireland, Italy and Spain offer grants for the acquisition of ships. Operating subsidies are granted in France, Spain and Portugal. In Denmark, granting loan subsidies and loan guarantees are given. This in part resulted in the young age of the fleet. The Netherlands has a liberal approach to maritime transport. The United Kingdom has not provided subsidies or loan guarantees which has in turn contributed to the reduction in the United Kingdom's merchant fleet.

6.4.2. *Government support through accelerated depreciation and tax allowances*

Belgium, France, Spain, Ireland, Italy, Portugal and the United Kingdom offer accelerated depreciation allowances regarding shipping activities. In Denmark, Germany, France, the Netherlands and Spain tax-free reserves can be created to purchase new ships from the operating profits or book profits. The Greek and the Irish tax systems are very attractive for shipping. The Irish tax regime offers a Business Expansion Scheme where shares in ships can be purchased, attracting tax relief, and a corporation tax reduced to 10% for shipping and related services.

6.4.3. *Government support through other means*

The French government owns 99% of *Compagnie Generale Maritime* amounting to about 16% of the French Merchant fleet. Much of the Portuguese fleet was state owned but there has been an extensive privatisation programme. In 1988 about 25% of the Spanish fleet was state owned. A significant proportion of national external trade of France, Greece and the United Kingdom is carried by the national merchant fleet. France operates a cargo reservation system requiring two-thirds of hydro-carbon imports and two fifths of coal imports to be carried by French shipping.

6.4.4. *Third country nationals*

Overall Member States are restrictive towards the employment of nationals of other Member States on board national flag vessel. Special legal arrangements have developed concerning the employment of non-nationals for the lower crew. Bilateral arrangements are made with Member States and with third countries according to the employment arrangements of those countries. These arrangements are to enable the shipowner to be competitive internationally and compete with open registry shipping. This can be done with the consent of government. The fleets of Belgium, Denmark, Germany, the Netherlands and the UK employ third country nationals to a significant degree. It can be inferred that this is done with the consent of their governments. France, Ireland, Portugal and Spain are however very strict about the employment of non-nationals. Out of the total number employed there has been a big drop in domicile seafarers in the EU. Table 3 provides an illustration.

7. Conclusion

The impact of open registers on employment and manning in the maritime sector has been profound. Registers more permissive in the areas of taxation, safety, manning, licensing, inspection and management has led European shipowners to leave the protection of their national flag along with the requirements to employ national or Community seamen. There was not enough action on the part of governments to stem the drastic decrease in traditional merchant fleets when action could have been taken.

The International Conventions drawn up ever since the 1980's have been directed towards direct influence on shipping registers. The decline in the merchant fleets has however continued, which has directly affected the employment of Community seafarers. Open registers are not the only cause of the decline but are perceived as the main cause. The nature of shipping has changed. In the 1980s in particular, vessels were highly automated and larger than when the phenomenon of open registries began in the 1950s. At present, new vessels are smaller than in the 1980s but still highly automated requiring an ever decreasing number of crew. It should be accepted that there is a natural decline in employment numbers but this decline has been severely exacerbated by the decline in the traditional merchant fleets as a result of the open registry phenomenon.

It is disappointing that in the attempt to combat the trends of the open registry the switch in emphasis from registry to safety arose out of shipping disasters. The EC has been reactionary to the problem, in fact this is true all over the world, but the present initiative concerning port state control, safe seas and safety at sea seems to represent a more productive policy. Achieving a high quality of shipping in Community waters and an efficient port structure will help to eliminate the benefits of cheap labour.

The integration of the port infrastructure and short sea shipping into the trans-European network will go a long way to creating a competitive environment in Europe. Government aid is equally important enabling sectors of the network to develop and maintain this competitive environment. There needs to be commitment from the Member States in achieving these aims. This commitment must in part involve the issues relating to cabotage restrictions. The stability of the European shipping market could be distorted if imbalance in the competitive positions of shipowners is maintained.

The shipping industry of Europe has been brought within the authority of the EC in its capacity in world trade. This authority extends to shipowners who carry out their business within the EC. Effective measurement of the impact of outflagging on employment and manning is therefore dependent on Community shipowner activity and the amount of interest they have in the Community merchant fleet as well as in their own state economies. It is employment opportunity which is directly affected by outflagging. For a true indication of employment numbers consideration must be made of the size and type of ship involved. The number of seafarers could then be identified. The impact of outflagging must be measured on the basis of the interests of the shipowning sector of the EC economy, development in international law and safety, and the EC initiatives in bringing the maritime industry within the auspices of the European Union.

Tables:**Table 1 Foreign Flag Registered Tonnage (dwt) of European Shipowners by Major Open Registry as of 1 January 1998 - Representing Ships of 1,000 grt and over**

| Country | Open Registry Flags (dwt-% shares) | | | | | | | | | | |
|-------------|------------------------------------|---------|---------|-------|--------|-----------------|-------------|---------|-------------------|---------|----------|
| | Panama | Liberia | Bahamas | Malta | Cyprus | Marshal Islands | St. Vincent | Bermuda | Antigua & Barbuda | Vanuatu | mill dwt |
| Greece | 17.5% | 14.4% | 8.8% | 24.2% | 29.5% | 1.9% | 3.5% | - | - | 0.2% | 7.8 |
| Germany | 9.3% | 45.3% | 0.4% | 3.4% | 20.9% | 0.3% | 1.1% | 0.4% | 18.7% | - | 12.2 |
| UK | 5.7% | 28.9% | 22.2% | 2.3% | 1.5% | - | 2.0% | 37.4% | - | - | 10.7 |
| Sweden | 3.0% | 63.8% | 20.7% | 0.2% | 0.4% | - | 0.1% | 11.7% | - | - | 7.9 |
| Italy | 7.0% | 8.8% | 27.3% | 45.8% | 5.2% | - | 5.8% | - | - | - | 3.9 |
| Finland | 0.2% | - | 93.1% | 4.9% | - | - | 1.9% | - | - | - | 1.9 |
| France | 33.1% | 19.4% | 37.0% | - | - | - | 10.5% | - | - | - | 1.8 |
| Belgium | 11.5% | 64.1% | 10.7% | - | 9.4% | - | 3.1% | - | 1.3% | - | 1.8 |
| Netherlands | 10.8% | 2.8% | 68.3% | 1.9% | 7.5% | - | 1.5% | - | 1.1% | 6.1% | 1.5 |
| Denmark | 15.7% | 29.3% | 38.2% | 0.6% | 10.8% | - | 0.4% | - | 0.4% | 4.7% | 1.5 |
| Spain | 19.5% | - | 69.9% | - | 8.7% | - | 1.2% | - | - | 0.7% | 1.2 |
| Austria | - | 92.2% | - | - | 7.8% | - | - | - | - | - | 0.5 |
| Ireland | 84.4% | - | 15.6% | - | - | - | - | - | - | - | 0.0 |
| Norway | 7.3% | 34.5% | 34.4% | 18.7% | 0.7% | - | 1.2% | 3.2% | 0.0% | - | 1.1 |

Source: Shipping Statistics Yearbook 1998

Table 2 Open Registry Flags by Country of Domicile as of 1 January 1998

| Country | Major Open Registry Flags of Ships of 1,000 grt and Over | | | | | | | | | | | |
|-------------|--|--------|---------|---------|-------|--------|-----------------|-------------|---------|-------------------|---------|-------|
| | Total | Panama | Liberia | Bahamas | Malta | Cyprus | Marshal Islands | St. Vincent | Bermuda | Antigua & Barbuda | Vanuatu | Other |
| Greece | 447 | 176 | 173 | 464 | 706 | 5 | 108 | - | - | 4 | 76 | 2083 |
| Germany | 29 | 216 | 14 | 29 | 219 | 3 | 12 | 1 | 385 | 1 | 129 | 909 |
| UK | 43 | 56 | 106 | 14 | 16 | - | 22 | 43 | - | - | 138 | 300 |
| Sweden | 7 | 32 | 21 | 5 | 8 | - | 4 | 3 | 1 | - | 97 | 81 |
| Italy | 15 | 14 | 30 | 42 | 7 | - | 18 | - | - | - | 22 | 126 |
| Finland | | | | | | | | | | | | |
| France | 13 | 5 | 30 | - | - | - | 17 | - | - | - | 33 | 65 |
| Belgium | 3 | 10 | 18 | - | 15 | - | 7 | - | 6 | - | 63 | 9 |
| Netherlands | | | | | | | | | | | | |
| Denmark | 13 | 12 | 49 | 3 | 2 | - | 1 | - | 2 | 1 | 103 | 83 |
| Spain | | | | | | | | | | | | |
| Austria | | | | | | | | | | | | |
| Ireland | | | | | | | | | | | | |
| Norway | 53 | 145 | 65 | 80 | 12 | - | 12 | 8 | 1 | - | 92 | 76 |

Source: Shipping Statistics yearbook 1998

Table 3 Number of seafarers employed in the merchant marines of the countries of the EU from 1980 to 1995

| Country | 1980 | 1986 | 1994 | 1995 |
|-----------------|--------|--------|--------|-------|
| Belgium | 3,304 | 2,928 | 1,800 | 1,634 |
| Denmark | 14,682 | 9, 779 | 7,665 | 7,600 |
| Finland | - | - | 4,058 | 4,400 |
| France | 15,047 | 6,807 | 5,539 | - |
| Germany | 27,041 | 20,470 | 15,338 | - |
| Greece | 79,459 | 31,934 | 33,373 | - |
| Ireland | 1,871 | - | - | - |
| Italy | 34,684 | - | - | - |
| The Netherlands | 9,912 | 14,218 | - | - |
| Portugal | 5,856 | 2,913 | - | - |
| Spain | 22,928 | 19,873 | - | - |
| Sweden | - | 11,479 | 10,741 | - |
| United Kingdom | 78,079 | 32,001 | - | - |

Source: OECD: Maritime Transport 1995 - In 1989 there were only 17,838 seafarers employed in the UK merchant marine.

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