

## OECD

### THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT AND MARITIME TRANSPORT IN 1984

*SUMMARY: I. Introduction: Global perspectives. – II. Highlights of the Report by the Committee on Maritime Transport – 1. Worldwide excess of tonnage. – 2. Matters relating to the United Nations: a) UN Convention on a Code of Conduct for Liner Conferences. – b) UN Convention on Multimodal Transport of Goods. – c) UN Convention of 1978 on Transport of Goods by Sea (Hamburg Rules). – d) UN Convention on the Law of the Sea. – e) UN Convention on Conditions for Registration of Ships. – 3. Fleets of the OECD member states. – a) Size and age of the fleets. – b) Personalia.*

## I. Introduction: Global perspectives

The operation of ships, despite the general improvement in the situation of the member nations of the OECD and the increase in demand, has not been profitable due to a strong excess of tonnage in the sectors of oil, bulk cargo vessels, and container ships. If the panorama appears less gloomy for liquid and dry cargo, the construction of a large number of high-capacity containerships makes it likely that competition will increase in the sector of transport of general goods.

Due to this situation, countries have been eager to adopt measures concerning distribution of trade and national flag restrictions and the OECD, through its Committee on Maritime Transport, dedicated a large part of its efforts to fighting against these types of laws, particularly in North and East Africa, Southeast Asia, and the Pacific. The Working Group of the Committee followed these events closely and succeeded, to a certain extent, in coordinating common steps among various member States. The Group also continued to observe trade between member States and the maritime companies of those countries with State-run trade.

During the year, the Special Group of the Committee on International Organizations served as a meeting place for the formulation of common positions before CNUCYD and affiliated organizations. In general, the 11th session of the Commission on Maritime Transport, which has begun to apply

the resolution of the 6th CNUCYD of 1983, was carefully prepared, particularly regarding the distribution of trade for bulk transport, the effective implementation of the UN Convention on a Code of Conduct for Liner Conferences, and the works in progress on international maritime legislation and multimodal transport. The Group discussed the common position adopted by the member States in the 1st session of the Diplomatic Conference on Conditions of Registration of Vessels. It also encouraged measures tending to reinforce liability and impede operation of ships that do not conform to the norms, but it continued to firmly oppose the adoption of mandatory rules involving the nationality of the crew, the location, and the capital.

With regard to the Committee itself, it dedicated most of its time to the elaboration of a project of recommendation that will be submitted to the OECD Council. This project contains the common principles for a maritime policy of the member States, having as a goal the maintenance of free circulation of ships for general and bulk goods within both the interior and exterior of the OECD zone. The project also seeks to establish directives on competition by regular liners in order to assure shipping companies of freedom to operate outside the system of liner conferences.

The list of direct or indirect tax or financial assistance that the member States have granted to maritime companies was completed. Additionally, a computerized data bank on maritime trade in the OECD zone, classified according to the carrier's flag, has been established. Finally, consultations have been held with both TUAC and BIAC concerning the most important problems of maritime transport, such as competition by State-run liners.<sup>1</sup>

## II. Highlights of the Report by the Committee on Maritime Transport

The 31st Annual Report on Maritime Transport, drafted by the committee of the same name, deals with the most relevant events of 1984 and the first few months of 1985 in this field. It is divided into five chapters and a statistical annex.

### 1. THE WORLDWIDE EXCESS OF TONNAGE

During 1984, the registered worldwide fleet decreased by approximately 1% of deadweight tons. The conversion into scrap of tankers (19.8 million deadweight tons) was 20% less than the 1983 figure due to the stabilization of worldwide oil trade, and excess capacity in this sector has decreased

<sup>1</sup> *Activités de l'OCDE en 1984 – Rapport du Secrétaire Général* –, OCDE, Paris, 1985, pp. 26–27.

slightly. Nevertheless, this excess still represents approximately 60% of demand. The demolition of ships affected some 4 million deadweight tons in the dry bulk sector, but was compensated by the delivery of more than 14 million deadweight tons of new ships. While this excess tonnage is worrisome, the reduction of laid up tonnage during the year is encouraging.

With regard to freighters, the high level of deliveries of load cargo freighters has been the most notable element. It is estimated that the world containership fleet grew almost 11% in 1984, and is expected to grow up to 12% in 1985. Due to the fact that an insignificant amount of tonnage is forecast for demolition, a growth of capacity greater than the increase in worldwide trading of manufactured products is forecast.<sup>2</sup>

## 2. MATTERS WITHIN THE SCOPE OF THE UNITED NATIONS

### a) *UN Convention on a Code of Conduct for Liner Conferences*

The Federal Republic of Germany and the Benelux countries are the only OECD member States that adhere to the UN Convention on a Code of Conduct for Liner Conferences, which entered into force on October 6, 1983. Several other member States made known their intention to ratify or adhere to the Convention, particularly Japan, Finland, Sweden and Norway.

The Common Market countries have either already ratified or will ratify the Convention according to EEC Rule 954/79, adopted in March, 1979. As contracting parties, they have declared or will declare upon adhesion their hope that all parties to the Convention follow its objectives and provisions as well as those contained in the Resolution on companies adopted in 1974 by the Conference of Plenipotentiaries. It was decided that companies outside of the liner conferences should be allowed to freely compete with companies who are members of these conferences. The entry into force of the Code of Conduct for Liner Conferences and of EEC Rule 954/79 reflects the concern of the EEC and OECD countries over the advance of uncontrolled protectionism.

Competition by State-run companies, especially those of the U.S.S.R., continues to worry a certain number of western nations and shipowners. Due to the persistent nature of this problem, the EEC decided to extend until the end of 1986 the vigilance that it maintains over the activities of the State-run companies in the commercial routes that link Europe with East Africa, Central America and the Far East. Other countries have used a different approach by attempting to establish a *modus vivendi* with the Soviet companies in question.<sup>3</sup>

<sup>2</sup> *Les Transports Maritimes, 1984*, OCDE, Paris, 1985, p. 16.

<sup>3</sup> In relation to this Convention: Vigil, R.: 'Las actividades de la UNCTAD en el campo de la legislación marítima internacional', *Anuario de Derecho Marítimo*, Vol. III, 1985, pp. 549-550; Martínez Puñal, A.: 'La Organización de Cooperación y Desarrollo Económicos y

b) *UN Convention on Multimodal Transport of Goods*

This Convention will enter into force 12 months after 30 States have become contracting parties. At the end of 1984, only Mexico, Chile, Malawi and Senegal had ratified it and Morocco, Norway and Venezuela had signed it.<sup>4</sup>

c) *UN Convention of 1978 on Transport of Goods by Sea (Hamburg Rules)*

At the end of 1984, the following States had ratified or adhered to this Convention: Egypt, Uganda, Tanzania, Tunisia, Barbados, Morocco, Romania, Chile, Lebanon, and Hungary. It will not enter into force until 20 States have become contracting parties.

d) *UN Convention on the Law of the Sea*

This Convention, adopted on 30 April 1982, establishes in great detail the system of law applicable to all of the world's oceans. By 10 December 1984, the date upon which it was closed to new signatures, 159 States had already become signatories. This is a record number for an international convention. Due to their objections to the provisions concerning extraction of minerals from the seabed, the United States, the United Kingdom, and the Federal Republic of Germany have not yet signed. The Convention will enter into force 12 months after the date on which the 60th instrument of ratification or adhesion has been deposited. By December of 1984 only 14 instruments had been deposited and none of them came from an industrialized country.<sup>5</sup>

During the last period of sessions, the Conference on the Law of the Sea

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los Transportes Marítimos', *Ibid.*, pp. 591-592; Pueyo Losa, J.: 'La actividad de la Comunidad Económica Europea ante el Derecho Marítimo', *Ibid.*, pp. 618-619; Ademuni-Odeke: 'Implementing the UNCTAD Code of Conduct: the UK Merchant Shipping (Liner Conferences) Act, 1982', *Marine Policy*, Vol. 8, January 1984, pp. 56-63; Sturmey, S.G.: 'Les taux de fret et le Code de conduite des conférences maritimes', *Journal de la Marine Marchande*, 66, 5 avril de 1984, p. 682-687; *Id.*: 'Administering the Code of Conduct', *Marine Policy*, Vol. 8, July 1984, pp. 203-216; Scheinvar, I.: 'El Código de conducta de las conferencias marítimas: significado y perspectivas', *Comercio Exterior*, Banco Nacional de Comercio Exterior (México), Vol. 34, septiembre 1984, pp. 899-909; Wijffels, R.H.: 'The Dispute Settlement Machinery on the Liner Code of Conduct: a Legal Jungle', *European Transport Law*, Vol. 19, no. 4, 1984, pp. 451-467; Conférence des Nations Unies sur le commerce et le développement (CNUCED): 'du code de conduite des conférences maritimes', SI/42/84, *La Semaine Internationale*, 3 du décembre 1984, p. 7.

<sup>4</sup> In relation to this Convention: Vigil: *op. cit.*, pp. 550-551; Martínez Puñal: *op. cit.*, pp. 592-593.

<sup>5</sup> In relation to this Convention: Dupuy, R.J.: 'La Convention sur le droit de la mer et le nouvel ordre économique international', *Impact: Science et Société*, no. 3-4, 1983, pp. 336-347;

adopted a resolution on the establishment of a Preparatory Commission of International Authority over the Seabed, responsible for extraction of minerals from seabeds located outside of national jurisdictions, and on an International Court of the Law of the Sea. The Preparatory Commission held its second session from 21 March to 13 April 1984 in Kingston, Jamaica, and sessions were resumed on 13 August until 15 September of the same year. The subject of regulation of concurrent claims dominated the session. A group of industrialized countries, including signatories (Benelux countries, France, and Japan) and non-signatories (United States, United Kingdom, Federal Republic of Germany, and Italy) concluded a provisional agreement among themselves which specified that they would abstain from intervention in each other's seabeds. This provisional agreement, together with the Soviet Union's unwillingness to negotiate with private seabed exploitation consortiums, caused great controversy at the meetings and therefore no progress was made towards the regulation of concurrent claims. For the same reasons, little progress was made regarding specific questions surrounding the formation of the International Authority over the Seabed, particularly 1) the effects of seabed exploitation on the producer developing States; 2) the creation of the enterprise that will act in name of the Authority; 3) the completion of the Code on exploitation of the Seabed; and 4) the creation of a court to hear litigation that might be caused by application of the Convention.

In the latter part of 1984, a new effort was made to resolve cases of concurrent claims among the four nations who are signatories of claims procedures regarding exploitation of the seabed (U.S.S.R., Japan, France, and India). However, a mechanism to examine concurrent claims by private exploitation consortiums and States still does not exist.<sup>6</sup>

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Caffisch, L.: 'La Convention des Nations Unies sur le droit de la mer adoptée le 30 avril 1982', *Schweizerisches Jahrbuch für Internationales Recht*, Vol. 39, 1983, pp. 39-104; Mateesco-Matte, M. 'Quelques remarques en marge de la Convention de Montego Bay (Jamaïque) sur le nouveau Droit de la Mer - Du 'patrimoine commun de l'humanité' au patrimoine national des Etats riverains', *Annuaire de Droit Maritime et Aérien*, Vol. VII, 1983, pp. 17-41; Pastor Ridruejo, J.A.: 'La Convención de 1982 sobre el Derecho del Mar y los intereses de España', *Cursos de Derecho Internacional de Vitoria-Gasteiz 1983*, cf Vitoria, 1984, pp. 69-103; McDorman, T.L.: 'The 1982 Law of the Sea Convention: The First Year', *Journal of Maritime Law and Commerce*, Vol. 15, no. 2, April 1984, pp. 211-232; Treves, T.: 'Problemas generales del Derecho Internacional a la luz de la Convención de las Naciones Unidas sobre el Derecho del Mar', *Cursos de Derecho Internacional de Vitoria-Gasteiz 1984*, Vitoria, 1985, pp. 17-62; Pueyo Losa: 'La indeterminación del nuevo Orden Jurídico-Marítimo Internacional: Reflexiones sobre el carácter consuetudinario de la Zona Económica Exclusiva y el valor de la Nueva Convención sobre el Derecho del Mar', *Revista Española de Derecho Internacional*, Vol. XXXVII, no. 2, 1985.

<sup>6</sup> 'La Commission préparatoire du droit de la mer ouvre une nouvelle session de quatre semaines a Kingston', WS/1172, *Revue de la Semaine*, 23 mars 1984, pp. 7-8; 'ONU: Commission préparatoire de l'autorité des fonds marins', SI/29/84, *Id.*, 20 août 1984, p. 2; 'Deuxième semaine de réunion de la Commission préparatoire de l'Autorité Internationale des Fonds Marins et du Tribunal du Droit de la Mer', SEA/160, 30 août 1984, pp. 1-5.

*e) UN Conference on Conditions for Registration of Ships*

This Conference met in Geneva from 16 July to 3 August 1984 in its first session, and later continued from 28 January to 16 February 1985. Between these two sessions, the President of the Conference, Mr. Fadika (Ivory Coast), undertook a vast program of consultation concerning the key problems that required solution. When the sessions resumed, Mr. Fadika deposited a document containing a summary of the points of agreement and disagreement among the diverse participants in the negotiations, but was unable to deliver an official compromise position.

This document turned out to be very useful. The Group of 77 elaborated its own compromise position, which was similar to that of Group B, and in which it was recognized that the adoption of a series of rigorous conditions on recruitment of crewmembers and management of ships ran the risk of creating difficulties. The Group of 77 remained faithful to its position, believing it necessary that the nationals of the flag State be at least in part owners of the ship or constitute a part of the crew.

The third session was held in July of 1985, and further progress was made. The final session will take place early in 1986.

### 3. FLEETS OF THE OECD MEMBER STATES

*a) Size and age of the fleets*

Due to the decrease of the fleets of the OECD member States, which has mainly affected the oldest ships, the age of the OECD fleet in its entirety is slightly lower than that of the worldwide fleet. This observation is especially true for the non-bulk fleet, where the oldest and least sophisticated vessels are found under the flags of the free registration and the developing countries. Among the principal fleets of the OECD, that of Belgium is quite modern, with 80% of its tonnage being less than 10 years old and having an average age of 7 years. The fleets of Sweden and Australia are similar. On the other hand, the fleets of Canada and the United States are the oldest. Even if the fleets of the Great Lakes (which have an average age of, respectively, 20.1 and 23.9 years) are not considered, the fleets of these two countries have an average of 15.4 and 16.4 years. Among the oldest fleets, they are followed by that of Greece (13.7 years) and Turkey (13.2 years).

*b) Personalialia*

The number of seamen in almost all of the OECD countries has decreased. The greatest decreases are found in the United Kingdom, Denmark, the Benelux countries and the United States, reflecting for the most

part the decrease in tonnage and in the number of flagships of these States. Turkey and Austria are the only nations that experienced an increase. The Turkish fleet increases 46% since 1981, and the Austrian fleet tripled during the same period.

The general contraction of fleets has been accompanied by a tendency to reduce the number of persons employed in each ship. The EEC Commission reported that total tonnage of member States doubled between 1960 and 1980, but the number of seamen decreased from 376,000 to 254,000. The President of the Norwegian group DYVI has stated that the average crew size has decreased from 25 or 30 men to 14, and may decrease to only 5 by the end of this century. Japan is working to decrease crew size, and in the United States, crews and unions are collaborating in a public program endowed with 1 million dollars designed to reduce the number of crewmembers.

This reduction in crew size seems to be the only solution, if recruitment of crew members from low-cost countries is to be avoided. During the end of 1984, these questions frequently faced shipowners and unions; at the same time, differences were also centered in demands for salary increases, causing a series of conflicts in Germany, Denmark, Greece, Japan, United Kingdom, and Norway. In the latter country, proposals recommending aid for the transition to other flags and employment of foreign nationals, after encountering fierce opposition by unions, were recalled in April 1985 in order to be reexamined. In the EEC, the Commission has been repeatedly requested to apply a policy permitting shipowners to offer salaries and working conditions that would attract citizens of these countries. This option would be supported by protectionist mechanisms that would isolate European maritime transport and would be contrary to the general policy of free competition. The Commission, resisting these pressures, states that it opposed the concept of economic linkage with regard to recruitment of crewmembers.

By the end of 1984, the fleets of Australia, Austria, Belgium, Denmark, Greece, the Benelux countries, Norway, the United Kingdom, and Sweden employed at least 10% of foreign nationals. On the contrary, in the United States, Portugal, Spain and Turkey, all crewmembers were required to be nationals. In Japan, shipowners prepared to fight against competition by their immediate neighbors – Taiwan, Korea, and the Phillipines – countries in which the cost of crewmembers is lower and which are in favor of employment of foreign crews. It is clear that it will be increasingly difficult to choose between the reduction of crews, the utilization of foreign crewmembers, or the transfer of ships to another flag.

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