

# SPECIAL REPORT

## LAST CLEAR CHANCE FOR AN ENDURING MARITIME POLICY

By

Clinton H. Whitehurst, Jr., Ph.D.

1998

**Emeritus Professor of Management and Economics  
Clemson University**

**THE  
STROM THURMOND  
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Professor Whitehurst joined the U.S. Maritime Service in August of 1944 and at the age of 17 sailed as 2d radio officer on the SS David Hewes. He continued to sail on merchant ships until 1953. In 1957 he received a commission in the U.S. Naval Reserve and served in the Ready Reserve until 1972.

Following his retirement from Clemson University as Professor of Management and Economics, Emeritus, he was a Visiting Research Scholar at the National Chiao Tung University in Taiwan, 1989-89 and 1991-92. While in the Republic of China on Taiwan, he lectured at the Chinese Naval Academy and the National Defense University. In 1994 he was a Visiting Professor at the Curtin University of Technology, Perth, Australia. His task at Curtin was to develop an academic program in the area of transportation and logistics.

At present, Professor Whitehurst is an Adjunct Scholar at the American Enterprise Institute, Washington, DC. and a Senior Fellow at the Strom Thurmond Institute of Government and Public Affairs, Clemson University, Clemson, South Carolina.

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# LAST CLEAR CHANCE FOR AN ENDURING MARITIME POLICY\*

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## PART I

### MERCHANT MARINE

A U.S. flag, foreign trade, merchant marine has been subsidized in one form or another since 1845. Similarly, a U.S. domestic trade fleet has been indirectly aided since 1789, and directly supported since 1920. (1)

In the post World War II era, the rationale for federal support of this tonnage was mainly in the context of national security requirements. In this period, various support measures were signed into law.....others failed. (2)

Maritime legislation historically has always been contentious, generally because of the relatively large number of (conflicting) interest groups affected. Appendix A lists the players that give form and substance in shaping American maritime policy.

With the end of the Cold War, *circa* 1992, the national security rationale has been questioned as the mainstay for continued government support of a merchant marine. Proponents of a U.S. flag fleet argue the rationale is still valid although changed in terms of missions and requirements.

In 1995, a number of maritime related issues were debated in the Congress and the maritime community in general. Issues included:

1. Operating subsidies for 40-50, "militarily useful," containerships engaged in foreign trade. The estimated cost of the program was \$1 billion over a 10 year period. (3) While different versions of enabling and authorization bills passed both the House and Senate, no bill became law in 1995.
2. Ending the 22 year old ban on the (foreign) export of Alaskan oil. Legislation to this end was signed into law by President Clinton on 28 November 1995. The maritime support part of the act required foreign exported oil be carried in U.S.-flag tankers. Domestic exports were already limited to U.S.-flag tankers under existing law. (*Section 27, Merchant Marine Act of 1920*)
3. Repeal or modification of the so-called Jones Act (*Section 27, Merchant Marine Act of 1920*) provisions which require that all ocean freight movements between U.S. ports be carried in U.S.-flag, U.S.-built ships.
4. Repeal or modification of the *U.S. Passenger Vessel Services Act (1886)*. This law restricts the carriage of passengers between American ports to U.S. flag, U.S. built vessels. On the other side, maritime supporters tried to amend the law to

prevent foreign flag cruise ships from engaging in "voyages to nowhere," i.e., sailing from an American port to a point in international waters and returning to that same port. A recent U.S. Customs ruling held that the practice was legal within the meaning of present law.

5. Sunsetting the Federal Maritime Commission (FMC) and transferring any of its remaining regulatory functions to the Department of Transportation or Department of Justice.
6. Bringing U.S. (vessel) safety and manning requirements into line with international standards.
7. Repeal of cargo preference laws, primarily as they affect U.S. agricultural exports. Present law requires that 100 percent of defense cargo, 75 percent of donated food aid, and 50 percent of other government impelled freight move on U.S. flag vessels.
8. Defining the national security role, if any, of U.S. owned, foreign flag vessels considered as being under effective U.S. control (EUSC) (American seagoing maritime union consider the EUSC concept as a thinly disguised justification for transferring American tonnage to "flag of convenience" countries.

All in all it seems fair to say that 1996 is a critical year for American flag shipping. In fact, 1996 may be the last clear chance to formulate and enact an enduring maritime policy, while at the same time granting that 1996 may be the worst year in the past century to fund new, multi-million dollar federal programs. (4)

## **Recommendations**

A comprehensive maritime policy would include the following:

\*Government financial support for creating and maintaining a defined number of "essential," door to door, worldwide logistics pipelines. While a U.S.-flag merchant would be a critical component of such systems, it would not be the only component. U.S.-owned multimodal transportation companies would provide service over one or more of these essential logistics pipelines.

In essence, the notion of an essential logistics pipeline is simply an extension of the earlier "essential trade route" concept found in the *Merchant Marine Act of 1936*. (5) Government subsidy payments, if necessary, would be to a multimodal transportation firm, not a liner operator. Department of Defense input would insure that any system of international logistics pipelines, both in terms of number and throughput capacity, was adequate for defense needs.

\*Centralizing all sealift support activities in DOD's Defense Logistics Agency (DLA). This consolidation would include all Maritime Administration (Marad) functions that relate to DOD sealift requirements. e.g. Administering any subsidy payments to a multimodal transportation company. By the same token, all Military Sealift Command (MSC) sealift support activities would be transferred to DLA. Appendix B discusses the present and historical role of MSC as a provider of merchant-type shipping in time of peace, war and national emergency. The Defense Logistics Agency would be the interface between

private sector multimodal transport firms (as the operators of sealift capital assets), the private sector suppliers of personnel to operate sealift "hardware," e.g., seagoing maritime unions, and the Department of Defense as the residual beneficiary of these assets in time of war or national emergency.

\*The education of licensed and unlicensed merchant mariners would be tasked to the private sector or state/local levels of government. The federal government would end all support to the U.S. Merchant Marine Academy at Kings Point and the present six state maritime academies. If Kings Point were to remain a maritime educational institution, it would be funded by the entire maritime industry, including maritime unions.

\*American seagoing unions would be recognized as important and permanent players with respect to insuring the long term viability of the merchant marine component of U.S. multimodal logistics pipeline systems. Their most important role would be in maintaining an active and inactive pool of merchant mariners. Coordinating maritime union educational and training activities and DOD sealift needs would be a responsibility within the DLA.

\*Continue deregulation of American shipping as begun under the *Shipping Act of 1984*. This includes abolishing the FMC and transferring any residual oversight functions to the Departments of Transportation and Justice as appropriate. The 1995 understanding between Sealand Services, the largest U.S.- flag containership operator, and the National Industrial Transportation League (a major shipper group) illustrates that seemingly irreconcilable differences can be resolved absent a federal regulatory presence.

\*Bring U.S. vessel safety standards into line with international standards. Too often, such a recommendation is read as a lowering of U.S. standards, with little attention paid to the option of raising international standards.

\*Indirect maritime support programs, i.e., the Jones Act (1920), the *Passenger Vessel Services Act (1886)* and various cargo preference laws should be retained unchanged until a long term maritime policy, one which incorporates long term programs, is in place. (6) This is nothing more than heeding the old adage." If a man does away with his traditional way of living and throws away his good customs, he had better first make certain he has something of value to replace them." (7)

\*Establishing an "American desk," or its equivalent, at the U. S. Department of State. This was a long time recommendation of the late Paul Hall, one of the most respected maritime labor statesmen of this century. Historically, the State Department has treated U.S. maritime interests as little more than bargaining chips when negotiating with foreign governments over maritime as well as non-maritime issues. One would have to go back to the 19th century to find any serious and comprehensive defense of American maritime interests by a ranking State Department official.

## Comment

U.S. multimodal transportation companies. By definition, these firms would operate different modes (water, rail, highway, air) under a single corporate roof. (8) Government subsidy payments would be to the multimodal firm, not a shipping subsidiary. The multimodal transport firm's obligation with respect to any government subsidy would be to develop and operate one or more door to door international logistics pipelines. Firm assets could include not only U.S.- flag vessels, land modes and air systems but also foreign assets such as terminals, land transport, air carriers and merchant ships. (9) Where U.S. ownership was restricted, equity and cooperative arrangements would be negotiated to insure, to the greatest extent possible, efficient door to door commercial service in peacetime and a rapid throughput of defense shipments in time of national emergency (10)

U.S. government policy is already moving in this direction. A provision of the proposed *Maritime Security Act of 1995*, not only makes the vessels of subsidized operators available to the government in times of national emergency, but also support assets such as containers and container handling equipment, terminals, as well as other intermodal systems. The importance of intermodal systems was also recognized by Congress when it passed the *Intermodal Surface Transportation Efficiency Act of 1991*. An Office of Intermodalism was established in the Department of Transportation whose function is to assist in developing efficient, national intermodal transportation systems. Coordination and cooperation with the Department of Defense was an implicit given in the legislation.

The recommendation of this paper simply carries the present intermodal development effort to a logical end, i.e., active government participation in creating U.S. owned/controlled international intermodal systems. An indirect but very important benefit of encouraging the development of U.S. multimodal transport companies is their potential financial strength, something too often lacking in stand alone shipping firms.

Mission and responsibility of the Defense Logistics Agency. The United States has a long history of mobilizing civilian transportation assets in time of war or national emergency. Until World War II, civilian assets were the primary means of meeting defense transport needs in time of conflict. The Merchant Marine Act of 1936 leaves no doubt about the role private sector shipping was expected to play.

However, in the post World War II period (the Cold War), a greater and greater reliance was placed on in-house, DOD assets. The reasoning was that the time necessary to mobilize civilian assets, as was the case in previous conflicts, no longer existed or was of such short duration as to be unacceptable to military planners. Thus, did private sector sealift assets become a secondary or backup defense transport capability.

The end of the Cold War should have brought a top to bottom reexamination of the role of privately owned and operated ships in meeting DOD defense requirements. It did not.

This paper urges that the peacetime management and operation of all DOD active merchant-type tonnage be contracted out to U.S.-flag liner (multimodal transport companies), tanker, bulk and unscheduled operators, right down to the last asset that floats. The MSC administered Naval Fleet Auxiliary Force of some 40 ships would be the exception. The operational responsibility for this tonnage would be returned to the several fleet commands. Special purpose shipping that might not be efficiently managed in the private sector would become the responsibility of other agencies. e.g. National Oceanic and Atmospheric Administration and U.S. Coast Guard. In every case, however, the burden of proof would be on the government to show that government management was more cost effective than private sector management. It might be noted in this respect that the 1972 joint Marad-Navy test of refueling underway Navy combatants by a union-crewed, privately owned tanker (*ST Erna Elizabeth*) was considered a success by then Chief of Naval Operations, Admiral E.R. Zumwalt, Jr. Insofar as substituting black hulls for gray ones, the exercise came to naught.

The responsibility for insuring that former MSC sealift assets were maintained and operated in a high state of readiness would fall to the DLA. Likewise, Maritime Administration responsibilities with respect to insuring that private sector, militarily useful ship assets be quickly mobilized in the event of a national emergency would also be tasked to DLA. The Director of a reorganized DLA would be a civilian rather than a uniformed flag officer of one of the services, as is the present case.

In summary, the Defense Logistics Agency would have the following additional responsibilities.

1. Contracting out to the private sector the operation and management of:
  - \*Strategic Sealift Forces
  - \*Mission Support Forces
  - \*Ready Reserve Force of the National Defense Reserve Fleet. (11)
2. Administering DOD liner shipping agreements, i.e., contracts with multimodal transport companies operating liner services, or any liner company operating independently of a multimodal transport firm.
3. Administering non-liner shipping agreements.
4. Administering operational subsidy agreements.
5. Administering the movement of all cargo preference and government impelled cargo.
6. Periodically assessing the national security role of the U.S. flag, domestic fleet and making recommendations in this regard.
7. Recommend the amount and kind of DOD funding for private sector sealift enhancement. Should a subsidy be needed to insure the availability of non-maritime multimodal transport assets, e.g., railroads, such a recommendation would also be a DLA responsibility. Federal expenditures in support of private sector transportation assets needed in time of war or national emergency would be evaluated in the context of all DOD expenditures. For example: Is the national security better served by the purchase of "X" number of main battle tanks or earmarking the same amount of money to keep "X" number of militarily useful, U.S. flag vessels at sea. Explicitly including sealift

(and other) private sector assets in determining what defense purchases will be made and what foregone, is an exercise long past due.

There are several compelling reasons for increasing/revising the mission of DLA. First, the agency has no orientation to a particular service. Historically, it is an agency oriented toward customer service, one vital in establishing door to door service on a worldwide basis, and particularly in very competitive markets. Moreover, customer service is a concept understood and appreciated by the private sector. Second, combining two agencies (Marad and MSC) is nominally a cost effective move, and should be even more so when phased into an existing agency. (12) Third, the assertion that funds for sealift are, in fact, defense expenditures, would be more compelling and better understood when the administering agency is a part of DOD and not the Department of the Navy. A spillover benefit would be a fresh start in relations between DOD and U.S. flag operators. In the past, disputes between MSC and operators over rates and conditions for moving defense cargo were, often as not, bitter and acrimonious.

In summary, it would be DLA's responsibility to insure that private sector transport assets are in place and readily available in a contingency, national emergency or war. Administering agreements (subsidy or otherwise) whose purpose is to insure that these assets are in place would be tasked to that agency. Stated another way...if recommendations of this paper are followed, DLA responsibility would be to insure that U.S. multimodal transportation firms, operating private sector transport assets offering service over international logistics pipelines, remain economically viable...at the least cost to government.

The mission of the Military Transport Management Command (MTMC) is to decide how military traffic moves and how to respond to DOD customer requirements. MTMC is the interface between DOD users and commercial carriers. The basic mission of MTMC would not change. It would still continue in its role of DOD's freight forwarder and travel agent.

The major responsibility of the Air Mobility Command (AMC) is to manage DOD-owned airlift assets (C-130, 141, C-5, KC-10, etc. aircraft) in peacetime. This responsibility does not change. AMC would also retain the responsibility for administering and activating the Civil Reserve Air Fleet (CRAF) program. There should not be any conflict between AMC's role with respect to aircraft in the CRAF program and DLA's role in insuring that multimodal transportation firms operating CRAF-enrolled planes remain economically viable.

The role of the U.S. Transportation Command (USTRANSCOM) in peacetime, in this author's opinion, remains unclear. In a war or national emergency where the President invokes emergency war powers, there is logic in ALL U.S. transport assets (private and DOD owned) falling under USTRANSCOM direction. One analogy is how the Cherokee Nation defined responsibility in time of peace and war. In time of war, peacetime government was replaced by a war chief.

The education and training of licensed and unlicensed merchant mariners. In 1996, federal support for graduating "X" number of merchant marine officers into an industry that requires a fraction of that number, simply cannot be justified. The estimated federal expenditure to operate the Merchant Marine Academy at Kings Point, New York is some \$30 million while federal support of the six state maritime academies approaches \$10 million.

Justifying such federal expenditures is a heroic undertaking, if it can be done at all. (13) Politically it is another matter, particularly with respect to the state maritime academies. The electoral votes of these six states-Maine, Massachusetts, California, Texas, New York, Michigan-represent the lion's share of the electoral votes needed to elect a president. Of all maritime reform proposals, ending these federal subsidies will be the greatest challenge of all.

The training of future unlicensed merchant mariners and the upgrading of present seamen should be a recognized union responsibility with respect to manning ships under union agreements. Fortunately, such training (by unions) already exists. (The Harry Lundeberg School of Seamanship operated by the Seafarer's International Union is an excellent example of private sector initiative in the area of maritime education.) The training of non-union merchant seamen, as is the case now, would remain in the private sector.

An opportunity that should be considered by American maritime unions is to offer training to seafarers from developing countries. Tuition would be set to cover all costs. Whether or not American seamen unions would accept such a role, such training will take place somewhere at some time given an ever growing worldwide movement to increase crew qualifications.

A task of the Defense Logistics Agency would be to maintain a current list (pool) of inactive seamen who would be willing, and have the necessary skills, to man merchant ships in a contingency when demand exceeded available supply. Providing the necessary data to DLA would be an industry-wide responsibility. When pool or skill levels fell to a point where the national security was put at risk, DLA would coordinate the corrective private sector actions needed to address the problem.

Licensed and unlicensed mariners, union and non-union alike, must be recognized as partners in any federally funded maritime support program, not just in name but in substance as well. Passage of *Public Law 95-202* in 1989, legislation which provided benefits to seamen similar to those who served in the armed forces during World War II, should end any debate about the commitment and dedication of merchant seamen in time of war or national emergency. That it took Congress almost 40 years to act only underscores the need for a greater understanding on the part of the public regarding the role of merchant ships and merchant mariners in time of conflict.

Deregulation of ocean shipping. Deregulation of ocean shipping will bring essentially the same benefits to the economy as did deregulation of air, rail and truck transport. In a word-more competition. More competition will not only improve service but rates

should fall as well. A temporary downside will be that weaker firms will not survive an industry shakeout. Some American jobs will be lost. In the long run, however, the surviving carriers will be stronger. Deregulation will also encourage carriers to negotiate global shipping alliances, i.e. share shipping assets. One such alliance is Sealand Services and Maersk. Their combined fleets total 170 vessels. Deregulation is an essential step in creating worldwide logistics pipelines, as suggested in this paper.

Harmonizing U.S. and international safety standards. In 1994, the House passed the *Coast Guard Regulatory Reform Act*. However, a similar bill failed in the Senate. The House bill aimed to eliminate U.S. requirements that exceed the standards of traditional maritime nations. Vessel construction standards is the area in which the greatest cost differential exists.

As the single nation at one end of the world's largest set of trading routes, the United States has the ability to influence, if not command, acceptable safety standards for vessels operating in the American trades. The recent review by the U.S. Coast Guard of safety regulations (requirements) with respect to over 100 foreign flag cruise ship that annually call at American ports, is a case in point.

The argument that should the United States sign off on international safety standards and that this will somehow increase the risk to cargo, passengers, and crew, is a question better left to marine underwriters than political pressure groups.

Maintain indirect maritime support programs until a long range, enduring maritime policy is in place. The economic benefit to the nation as a whole should the plug be pulled on the Jones Act, the *Passenger Vessel Services Act of 1886*, and the various cargo preference laws, is small in the context of a \$7.13 trillion GDP (March 1995) and the amount spent annually on agricultural subsidies. In terms of government outlays, cargo preference costs of \$200 million pale beside annual direct and indirect agricultural subsidies of some \$40 billion. (14)

While it is undisputed that cargo preference laws (particularly food aid programs) add to the landed cost of food shipments, somewhere between 11-14 percent of the total program cost, loss of this cargo would cause the pool of merchant mariners to shrink significantly. For as the active pool shrinks, so does the inactive pool that would be called upon to man reserve and prepositioned ships in a contingency. No argument is made that any great part of agricultural exports is moved in militarily useful ships.

In 1994 the U.S. General Accounting Office sponsored a workshop on crewing Ready Reserve Force ships. The workshop agreed that the key to crewing RRF vessels was to maintain a viable U.S. merchant marine industry.

Effective U.S. controlled ships. The idea of U.S. owned, foreign flag shipping serving U.S. national interests has been around a long time. In the run up to American entry into World War II, it was one of several ways to avoid U.S. neutrality acts and aid Great Britain. The problem, however, (which most analysts ignore) is that there is a difference between serving a national interest and a defense interest.

The presence of U.S. owned, foreign flag shipping in many trades keeps rates competitive which in turn means lower consumer prices. Having U.S. tonnage registered under the flags of small, generally developing nations, gives American policy makers leverage in dealing with those nations. Finally, past restrictions on overseas investment by U.S. firms has generally been counter-productive in the long run. All of the above, however, does not add up to a "defense interest."

The EUSC idea was flawed from the start, mainly because (1) there was no guarantee that foreign crews would continue to man the ships in conflict situations, which in turn raised the questions of how to crew these ships and the time to crew the ships should foreign crews refuse to sail them; (2) EUSC vessels, for the most part, are only marginally militarily useful; and (3) notwithstanding written agreements, many flag of convenience governments are hesitant to renounce sovereignty over their shipping, particularly when the ships were to be used in politically contentious conflicts, conflicts which many times pitted non-aligned, developing nations against developed and wealthier western nations.

Ranking military officers and knowledgeable maritime commentators have always questioned the value of EUSC tonnage. Since, however, there was no significant outlay of defense funds, civilian officials at DOD were content to leave well enough alone and endorse the concept, even if not in ringing terms.

### **Aircraft**

A problem that American military planners must consider in the next century is not only assuring that there will be a sufficient number of U.S. flag, militarily useful ships, but a sufficient number of long range, private sector U.S. flag, militarily useful aircraft.

In 1996, U.S. flag air carriers operating on international routes are competitive, in fact, too competitive in the view of many foreign governments.

In the last six years, passenger traffic between the United States and foreign destinations increased 47 percent, while domestic traffic increased by only six percent. U.S. airlines increased their share of foreign traffic from 49 percent in 1980 to 54 percent in 1993. A European Union study concluded that the operating costs of major European carriers in 1992 were 50 percent higher than their American competitors. (15)

Given the above, there would seem little to worry about. The present Civil Reserve Air Fleet (CRAF) program insures that approximately 200 U.S. flag, private sector passenger planes and 150 cargo aircraft will be made available in an emergency. (16) However, it is well to remember that 40 years ago (1956) the U.S. privately owned, foreign trade merchant marine numbered 608 vessels including 31 combination passenger-cargo ships and the liners SS America and SS United States. The privately owned, U.S. domestic fleet included 396 vessels. Seafaring jobs numbered approximately 57,000. (17) Liner share of U.S. foreign trade (tons) was almost 39 percent.

In its issue of July 1994, the authoritative publication Marine Log listed 262 militarily useful domestic and foreign trade vessels (500 grt and over) operating under the American flag. Included were 86 containerships, 16 RO/ROs, 25 general cargo, 10 barge carriers and 125 tankers. (18) U.S. government owned tonnage is not included in the above, e.g. RRF vessels. In 1994 U.S. liner share of American foreign trade (tons) was about 16 percent. Total seafaring jobs were less than 14,000. Jobs on vessels of 1,000 gross registered tons (grt) and over were estimated at 9,000.

In 1996, the trend is toward a greater and greater number of cooperative arrangements, including equity agreements, between U.S. and foreign flag airlines. Appendix C summarizes this trend. The question is-will operating costs of Third World, developing nation carriers-in particular crew costs-be significantly less than those of the United States? Recall that Third World nations forced a UN sponsored liner cargo sharing agreement upon traditional maritime nations. At some time in the future, will they demand a greater presence in international aviation? Should this occur, all the pieces will be in place for the emergence of U.S. owned, "flag of convenience" airlines.

At its annual conference in 1994, the International Civil Aviation Organization discussed the likelihood of aircraft being placed under flags of convenience.

Developing and supporting financially strong U.S. multimodal transportation firms, which include airlines, will go a long way to insure that operating subsidies for U.S. air carriers will not become necessary, as is now the case with American foreign trade shipping. It is a defensive strategy that is worthy of consideration.

## PART II

### SHIPYARDS

Historically, there have always been many players with respect to forming and sustaining a U.S. maritime policy. Shipyards are one of the most important.

From the beginning, government support for a merchant marine was in one way or another tied to the well being of American shipyards. Provisions in the *Merchant Marine Acts of 1920 and 1936* tightly bound the two groups together, i.e., support for one was tied to support for the other. Ships receiving mail or operating subsidies in foreign trade or operating in the protected domestic trades, were required to be American built, and with few exceptions, repaired in U.S. shipyards. Most ships carrying preference cargoes were constructed in American yards.

In 1981 the requirement that U.S. flag, foreign trade vessels receiving an operating differential subsidy (ODS) be American built ended. Subsidized operators could now purchase their ships in low cost foreign shipyards. Vessels operating in the domestic trades were still required to be constructed and repaired in U.S. yards.

A major part of the rationale for ending the tie in between shipyards and U.S.-flag, foreign trade shipping lines was the on going buildup of the American Navy begun in the late 1970s. President Reagan's goal of a 600 ship Navy and with no expectation that the Cold War would end quickly, seemed to assure an adequate shipbuilding base. And while shipyards continued to protest their exclusion from U.S. commercial building, they met with little success.

At the end of the 1980s and early 1990s, several trends were evident. First, operating differential subsidies were being increasingly challenged as wage differentials between U.S. and foreign operators widened. Second, American shipyard labor costs were approaching equity with European and Japanese yards and actually were less in some. Third, the risk of losing an adequate shipyard mobilization base was being recognized as a legitimate concern in defense planning. And fourth, the collapse of the Soviet Union in 1991, hurried along an already begun process of scaling back the size of the Navy. A Navy of some 350-75 ships was now considered adequate. This downsizing took its toll on an already financially weakened shipyard industry.

At the beginning of the 1990s, shipyard lobbying efforts turned away from trying to restore a tie in between a declining foreign trade, U.S. flag fleet and American shipyards. The message to Congress and the executive branch was now-do something about foreign government subsidies to their shipyards, particularly Asian yards. The argument was that American shipyards could, in fact, compete in a number of areas given a level playing field. The second and third prongs of U.S. shipyard strategy were to defend American cabotage laws, and to keep in place and expand a recent change in maritime policy which allowed the government to offer federal loan guarantees to foreign ship operators who purchased vessels in American yards. (19)

## Issues

In 1995, shipyard issues before Congress included:

(1) Whether or not U.S. shipyards building under the government's loan guarantee program (Title XI, *Merchant Marine Act of 1936*, as amended) should be required to purchase major ship components from U.S. suppliers. This issue split the nation's shipyards. The larger yards, represented by the American Shipbuilding Association, favored allowing foreign components to be counted as part of a ship's construction cost eligible for Title XI financing. The more numerous smaller yards, represented by the Shipbuilders Council of America, favored keeping the requirement of American components.

(2) Whether or not to implement the recently concluded OECD ban on shipyard subsidies. In July 1994, the United States, the European Union, Japan, South Korea and Norway agreed to end shipyard subsidies by January 1, 1996. Under terms of the agreement, the conditions for financing construction under Title XI will be less favorable. The duration of Title XI loans will be cut from 20-25 years to 12 years and coverage reduced from 87 to 75 percent. The six large shipyards, represented by the American Shipbuilding Association, favor renegotiating the OECD agreement; the 40 some odd smaller yards and suppliers represented by the Shipbuilders Council of America are content with the present terms of the agreement.

(3) Whether or not American cabotage laws should be repealed or modified. The year 1995 saw a major effort in the Congress to do away with or amend these laws, laws which require tonnage in the domestic trades be built in American yards. (20)

(4) Closure of naval shipyards as authorized by the Base Closure and Realignment Acts of 1991 and 1993 and recommended by the Base Closure Commission. States and cities (ports) adversely affected by closures fought to reverse closure orders but at the end of 1995 none were successful. Yards recommended for closure are located at Charleston, SC, Philadelphia, PA, and Long Beach, CA. The major effect on communities where yards are to be closed is loss of jobs. Naval shipyards historically have been labor intense operations.

(5) Export of U.S. built warships and export of naval technology.

## Comment

\*American shipyards, small and large, naval oriented or not, repair or build, have a window of opportunity to once again become players in world markets. Being allowed to include foreign components in their builds without penalty is essential for long run shipyard profitability, for both large and small yards. If American components are price and quality competitive there will be no problem (The transportation charge for foreign components is still a part of delivered price) If there is a concern that foreign suppliers may be subsidized by their governments, firm and decisive action by the Assistant Secretary of Commerce For Trade and Development (Office of Trade Representative) is

the remedy. The American desk at the State Department would package such action in diplomatic language but also make clear American resolve to defend its shipyard supplier base. Moreover, there is no bar to U.S. yards acquiring competitive and profitable American suppliers, nor should there be any restriction on American yards acquiring foreign suppliers. Given the membership of the Shipbuilders Council, their tilt toward legislative protection for their supplier members is understandable but flawed in terms of achieving a long term viability for all U.S. shipyards.

\*The OECD agreement is probably the best obtainable for the United States. The argument of the larger shipyards that too much was given away to obtain it neglects the fact that foreign signatory governments also had to be responsive to pressures from their shipyard constituents. A better way to look at the issue is to ask: What if the OECD agreement fails of ratification? The world shipbuilding industry is then back to square one. Shipyard subsidies will be the name of the game. And it is here that U.S. yards will lose given the fact that a balanced budget-minded Congress will hardly support a subsidy bidding war. Not so, however, with competitor nations. Historically, socialist and quasi-marketplace countries have no reservation when it comes to subsidizing key industrial sectors of their economies. The quicker American yards accept OECD provisions and position themselves to compete in worldwide markets, the better. Instead of the larger yards insisting on a phase-in of the OECD agreement together with some kind of transition subsidy, their emphasis should be on improving productivity. It is not enough to point to the large productivity-increasing investments already made. America's competitors are still ahead in too many critical areas. (21)

\*In 1996, there is an oversupply of shipbuilding and repair capability in the United States. One indicator of this overcapacity is the difficulty encountered by Charleston, South Carolina in its attempt to interest private sector investment (foreign and domestic) in the former Charleston Naval Shipyard, i.e., investment as a shipyard. While a few more shipyards can be expected to close, the industry is approaching the point where a long term, sufficiently funded Title XI loan guarantee program will be able to insure an adequate shipbuilding/repair mobilization base.

\*While the ultimate purpose of those who insist on repealing or amending U.S. cabotage laws may be defensible on economic grounds, in 1996 their strategy is questionable. Insistence on going head to head with maritime supporters (Congressional Republicans, Democrats, the DOD, and the President) at a time when a U.S.-flag sealift capability is close to extinction stands little chance of success.

Reform of U.S. cabotage laws will only come about when a long range, enduring maritime policy is in place and generally accepted by the American electorate. The defining moment will be when there is a sufficient amount of (militarily useful) private sector, U.S. flag tonnage available to meet DOD's worst case scenarios, together with a sufficient pool of U.S. seamen, not only to man this tonnage, but also reserve and prepositioned vessels. Then and only then can negotiations begin to reform U.S. cabotage laws.

\*A long run goal would be to close all but two naval shipyards, leaving one on each coast. In 1996, however, this is not politically feasible, given a slowed economy and continued corporate downsizing, and such an effort would only complicate efforts to enact a comprehensive maritime policy. (22) It is not too early, however, to examine the option. The bottom line is—can privately owned U.S. shipyards be completely responsive to defenses needs in both peace and war. If so, naval shipyards should go the way of DOD's in-house merchant marine, i.e., no longer exist. The question has been asked before.

\*The United States has a long history of exporting arms and defense technologies to friendly countries. Stinger missiles, F-16s and AWACs, to name but three high tech systems. Of the three services, the Navy has been the most reluctant to agree to foreign military sales (FMS) of its high tech hardware and software. Rather, the Navy preference is to sell older versions of technology after newer systems come on line., e.g. FF-G (Perry class) guided missile frigates and the original Aegis combat systems. Navy refusal to agree to the sale of U.S. designed diesel submarines (assuming American yards are willing to build them) is a case in point (23) Foreign sales of the F/A-18 Hornet on the one hand, and an almost paranoid resistance to sale of diesel submarines, on the other, is logically inconsistent. And the more so given a legislative mandate that major U.S. surface combatants and submarines be nuclear powered. If the Navy must worry about anything, the greater threat is that Russian nuclear submarine technology may fall into unfriendly hands. Russia has already sold Kilo-type diesel electric attack submarines to China, India, and Iran.

## **Conclusion**

To the greatest extent possible, certainty must replace uncertainty with respect to developing an enduring maritime policy. In this respect, some things are more doable than other. Less contentious issues should be acted upon first. They include:

(1) Ratify the OECD agreement as it stands. The sooner the terms under which Title XI loan guarantees can be made, the better. While U.S. yards will lose some contracts due to less favorable loan guarantee conditions, long run planning will be more certain with respect to where (which niche markets) U.S. yards are competitive. Concurrently, when funding Title XI, Congress should err on the high side when estimating demand for loan guarantees. (24)

(2) Settle the question of how much a differential is acceptable between foreign and U.S. ocean transportation costs with respect to the movement of agricultural preference cargo. It should be kept in mind that the trade off is not between tonnage and the extra cost, but between having an adequate pool of merchant seamen available in time of emergency and the extra cost. A suggested 10 percent cap on any excess seems reasonable.

(3) U.S. safety standards should be harmonized with international standards as quickly as possible. While the 1995 agreement between the Coast Guard and the American Bureau of Shipping to reduce the effect of costly U.S. regulations and thereby increase

the competitiveness of U.S. flag ships and shipyards is an excellent beginning, it is still only a beginning. (25) To give the necessary certainty to the maritime industry, changes in requirements should be set in legal concrete, not pilot agreements which can later be canceled or modified.

(4) Maritime supporters in the Congress and the Clinton administration should make it abundantly clear that now is not the time to consider reform of U.S. cabotage laws. Republicans should make it clear that a change in administrations, should it come about, will not consider such reforms until a permanent maritime program is enacted into law and long range funding guaranteed. Those seeking reform of our domestic navigation laws should be invited to sign on in developing an enduring maritime policy, one which at some time in the future may incorporate changes in U.S. cabotage laws.

(5) American seamen unions must be prepared to contribute to a long run, permanent maritime policy. One contribution that can be phased in is to bring American crew sizes into line with international norms that do not compromise vessel safety. Future seaman unions will be very akin to the old craft unions of the former American Federation of Labor (AFL). In that era, skill was the criteria for membership, not how many jobs unions could create.

What the unions have right to expect in return is an end to critically comparing U.S. wages with those of foreign flag operators. If it is granted, as argued in this report, that government funding of a foreign trade merchant marine, one suitable for sealift purposes in a contingency, is a national defense expenditure, then wage comparisons, if made at all, should be between foreign uniformed military personnel and U.S. military personnel on the one hand, and foreign and U.S. seamen on the other. When all benefits are factored into American military personnel costs, the percentage difference between American and foreign seagoing wages will seem to be quite reasonable. Appendix D summarizes differences between U.S. and foreign seamen wages.

Second, seamen's unions and licensed officer unions must settle the issue of licensed American officers serving on re-flagged U.S. ships. In economic terms, employing U.S. officers on foreign flag vessels is a "Pareto" optimum solution, that is, one party gains while no party loses. It is also worth noting that the national security is well served by having U.S. officers on foreign flag vessels, particularly on those vessels that are part of U.S. multimodal transportation companies offering service over worldwide logistics pipelines.

American unlicensed seagoing unions, however, have a right to expect that the American government will actively support programs to insure that (1) foreign seamen serving on re-flagged vessels meet high-end professional standards and (2) that reflagged vessels be operated in strict compliance with international safety standards. (26)

(6) End the Effective U.S. Control (EUSC) concept with respect to American owned foreign flag shipping. The concept is part of the underbrush that must be cleared away if an enduring maritime policy has any chance of success. As long as the EUSC concept is around, those who question the need for a strong U.S.-flag presence in international

ocean commerce, will have still another argument (fallacious as it might be) to justify their position. The Cold War is over. And like the FMC, if there ever was justification for the EUSC concept, its time has past.

Longer term goals include:

Creating U.S. multimodal transportation companies wherein ocean shipping is but a part of the system, should be considered as an ultimate end for maritime policy makers, not keeping at sea a "sufficient number" of militarily useful ships engaged in foreign trade operated by stand-alone shipping companies. (27)

To emphasize the point for developing U.S. owned/controlled worldwide logistics pipelines, consider several exercises. First, have a DOD customer ship the maximum size package that Federal Express will accept for a guaranteed two day delivery to a foreign destination over 3000 miles distant. Ship the same package via DOD in-house transport. Compare cost and time. Second, have a DOD customer on the east coast offer CSX a 20 foot container destined for an inland point in Asia three or four thousand miles distant and make the same comparisons. Many other comparison-exercises can be made, particularly those of interest to defense planners. A February 1996 U.S. General Accounting Office report ...."Streamlining of the U.S. Transportation Command is Needed," is instructive in this respect. The report notes:

Defense transportation costs are substantially higher than necessary. DOD customers frequently pay prices for transportation services that are double or triple the cost of the basic transportation. For example, customers may pay MTMC and MSC \$3,800 to arrange movement of a container load of cargo by commercial carriers from California to Korea; however, DOD is charged only \$1,250 by the commercial carrier for this service.

It cannot be too strongly emphasized, however, that the success of multimodal transportation firms depends on DOD's unequivocal commitment to use U.S. private sector transportation systems wherever they exist and to encourage their establishment where they do not exist. (28)

(7) The Federal Maritime Commission should be "sunsetting." It is an agency of another time. With the exception of the FMC itself, there is broad agreement that the agency has outlived its usefulness. (The first Reagan transition team gave serious consideration to sunsetting the agency.) Putting off final action only increases uncertainty in a maritime world where U.S. operators and shippers need to know the rules of the game, not speculate on what they might or might not be at some time down the line.

(8) Merging MSC and Marad responsibilities for merchant-type shipping into the Defense Logistics Agency will be equally as contentious as doing away with government subsidies for merchant marine officer training. But like the multimodal transportation concept, it is a goal that must be pursued. Either the United States relies on the private sector for its merchant ship-type sealift requirements or it does not. As long as a nationalized merchant marine exists of whatever size and configuration, so

too will remain the long ago argument put forth before Congress in 1950 by Admiral William Callaghan, then Commander of the Military Sea Transport Service.

*Senator Magnuson.* You feel that the Navy must continue to operate a certain portion of military merchant marine.

*Admiral Callaghan.* I do, definitely.

*Senator Magnuson.* How long would you say that should continue?

*Admiral Callaghan.* I should say that would continue until the world situation approximated that perhaps in the early twenties or early thirties before the threat of a second world war faced us. (29)

A fair question to ask when considering merging MSC and Marad sealift responsibilities into the Defense Logistics Agency is: Why not place the administration of transportation assets, including sealift, with Marad? It is a civilian agency, which seems to be much more compatible with the arguments put forth in this paper.

The answer is straight forward. For a long time, the rationale for government subsidies/protection for U.S. flag merchant shipping has been the national security. Nothing more or less. If the rationale is to be accepted by the public, then the administration of federally funded programs in support of a merchant marine, will be better understood when the administering agency is a part of the Department of Defense. It is important to note, however, that the above recommendation will only succeed when there is no competition between DOD in-house transportation assets and those in the private sector.

While it might be expected that the Department of Defense would welcome major responsibility for insuring the availability of an adequate sealift capability, such is unlikely. Far better from DOD's point of view is to have a militarily useful merchant marine funded outside the DOD budget. Service chiefs will vigorously argue that there are more than enough trade-offs to contend with in framing a defense budget without adding another contender for limited funds.

## **A Final Comment**

The year 1996 may be the last clear chance for a U.S. flag merchant marine capable of meeting our present national security needs and those on into the 21st century. It is a challenge not to be taken lightly. Appendix E discusses the "last clear chance" rule as applied in admiralty cases and makes the analogy between the rule and the responsibility of Congress.

## END NOTES

1. A mail subsidy bill to support American, foreign trade shipping in the North Atlantic was passed in 1845. Legislation in 1789, 1790, and 1817 effectively limited the American domestic trades to U.S. flag, U.S. built vessels. The prohibition against foreign-flag vessels in the domestic trades was restated in Section 27 of the *Merchant Marine Act of 1920*, the so-called Jones Act.

2. Major maritime support legislation in the post World War II period included the *Ship Sales Act of 1946*, the *Cargo Preference Act of 1954*, and the *Merchant Marine Act of 1970*. In 1974 and 1977 legislation requiring a certain percent of U.S. oil imports be carried on U.S. flag tankers was first vetoed by President Ford and later failed in the House of Representatives. The 300 ship build provision in the 1970 act was never realized.

3. The proposed *Maritime Security Act of 1995* provided approximately \$1 billion in operating subsidies over a 10 year period. During the first five years, the subsidy would be \$2.5 million per ship, dropping to \$2 million per ship in the last five years. A \$75 million "termination reserve fund" was included should Congress fail to appropriate monies in future years.

4. Almost certain is that funding for any new maritime support program in 1996 must be preceded by savings in existing (maritime) programs. If such savings can be identified by maritime supporters and the savings realized, then, to that extent, the odds for enacting and funding new program(s) improve.

5. The *Act to Provide For Ocean Mail Service Between U.S. and Foreign Ports and To Promote Commerce (3 March 1891)* required shipping service be maintained on specified international mail routes as a condition for government financial support. The *Merchant Marine Act of 1936* substituted "essential trade routes" for "mail routes."

6. In 1983, 1985 and 1986 this author argued for various modifications in the Jones Act and suggested some possible trade-offs to increase overall transport efficiency. See: *The U.S. Merchant Marine: In Search of An Enduring Maritime Policy* (U.S. Naval Institute Press, 1983), *Domestic Shipping in American Ships: Jones Act Costs, Benefits and Options* (American Enterprise Institute, 1985) and *The U.S. Shipbuilding Industry: Past, Present and Future* (U.S. Naval Institute Press, 1986).

The past decade has not been the best of times for U.S. foreign trade liner shipping. In 1996, Jones Act shipping accounts for a larger share of U.S. flag, militarily useful tonnage than in 1985. Thus, while the case for a review of U.S. cabotage laws remains persuasive, now is not the time.

7. Basuto proverb. Quoted in *Something of Value* by Robert Ruark (Garden City, N.J.: Doubleday, 1955).

8. Three options are available when establishing door to door transport services. One is for different modal assets to be owned by a single firm (e.g. CSX Corporation). A second is individual firms enter into cooperative agreements with respect to intermodal movements. (In the United States there are numerous examples). A third is a combination of the first and second (e.g. Norfolk-Southern Corporation). From A DOD view, multimodal ownership is preferable. From a foreign government point of view and probably a U.S. Department of Justice (Anti-Trust Division), viewpoint, cooperative arrangements are preferable.

Some of the world's most efficient multimodal transport firms combine air and surface modes in their cargo movements. In the United States examples are Federal Express and United Parcel Services. The Evergreen Group in the Republic of China on Taiwan operates containerships (the world's largest fleet), terminals, land transport and an airline under one corporate roof. An Evergreen subsidiary manufactures containers.

9. The trans-ocean leg of the logistics system would be restricted to U.S. flag vessels. Waivers would be granted only when no U.S. flag ship was available.

10. Door to door service from the United States to a foreign inland destination as described, would of necessity, be feasible only in friendly nations with a history of respect for contracts and private property or in nations formally allied with the United States.

11. Remaining National Defense Reserve Fleet (NDRF) tonnage would be disposed of as quickly as possible.

12. The estimated total budget authority (1996) for the Maritime Administration is \$350 million. The 1996 budget for the Military Sealift Command is in excess of \$2 billion for all operations which includes fleet support auxiliaries. The Ready Reserve Force, now funded in Marad's budget, will be funded by DOD in 1996.

13. Past justifications have included the argument that Kings Point and the state academies turn out graduates that not only serve at sea but in shoreside maritime-related jobs. Ignored is the fact that hundreds of the nation's business schools are equally qualified to supply the shoreside maritime industry with managers (a worthwhile General Accounting Office exercise would be to survey maritime industry jobs in terms of where industry managers received their education). A second argument put forward is that maritime academy graduates are a source of naval reserve officers. Ignored is the fact that Naval Reserve ROTC units at many of the nation's universities do the same thing and that a downsized Navy can offer active duty to only a fraction of the annual output of naval reserve officers.

14. The \$40 billion includes government subsidies for nutritional needs (food stamps and the school lunch program). In 1993, approximately \$13 billion was paid directly to farmers, including \$1.2 billion in export subsidies. The U.S. General Accounting Office estimates that \$200 million per year is the cost of agricultural cargo preference legislation, that is, the excess cost of using U.S. flag ships. One proposal being discussed

is placing a 10 percent cap on any excess cost.

15. U.S. General Accounting Office, *International Aviation: Airline Alliances Produce Benefits But Effect on Competition is Uncertain* (Washington, D.C., U.S. General Accounting Office, 1995), pp. 2, 10, 12.

16. Airlines that participate in the Civil Reserve Air Fleet (CRAF) program are required to commit a specified number and type of aircraft should a contingency occur in which surge airlift is needed. In return, these airlines are eligible to contract for DOD air cargo movements. In the 1991 Gulf War, participating CRAF planes carried 65 percent of the troops and 25 percent of the freight that moved by air.

17. All 1956 data is from: *Annual Report of the Federal Maritime Board and Maritime Administration, 1956*. Appendices A, C, and F and Financial Statement, Exhibit 2.

18. *Marine Log* (July 1994) pp. 45-60.

19. Loan guarantees are authorized under Title XI of the *Merchant Marine Act of 1936*, as amended.

20. In 1995, Representative Walter B. Jones, Jr. (R-NC) sought support for legislation that would allow foreign flag vessels into U.S. domestic ocean and intercoastal waterway trades. Inland water operators would still be protected under Jones Act provisions. Foreign flag liner operators would be required to employ U.S. crews and be subject to current American law, e.g., tax and environmental laws. U.S. flag carriers would be allowed to purchase foreign built ships.

21. A 1994 report sponsored by the National Shipbuilding Research Program looked at five American yards, four European yards and one Asian yard. It found that American yards were behind their competitors in areas such as engine room machinery and hull engineering. Design capability and marketing ability were also areas in which U.S. yards were found to be generally non-competitive.

22. In 1978 this author argued for closing naval shipyards and relying on the private sector for the great majority of naval conversion, alteration and repair (CAR) work. See: "Is There A Future For Naval Shipyards?" *U.S. Naval Institute Proceedings*, 104:30.

23. Equally important is the advantage of compatibility of systems as between the U.S. and allied navies. Foreign military sales should also be viewed as an opportunity to lower procurement costs (extend production runs) and at the same time help insure an adequate shipyard mobilization base.

24. As of May 1, 1995, *Marine Log* (June 1995) listed 25 Title XI applications (69) ships with proposed loan guarantees of \$1,828,352,387.

25. The American Bureau of Shipping-Coast Guard agreement allows U.S. flag vessels to be certified as being in compliance with American law by complying with ABS,

international rules, and a supplementary set of Coast Guard requirements that are not required by ABS.

26. Training for foreign seamen serving on re-flagged vessels at union schools is a concept deserving consideration. While American operators would probably be initially hostile to having their lower-cost, non-union, crews trained in a union environment, there are still wide areas where mutually beneficial arrangements could be made. The concept also fits into the notion of developing U.S. multimodal companies which include foreign as well as American transport components.

27. A major criticism of the proposed *Maritime Security Act of 1995* is that the number of (50) militarily useful ships to be funded is driven more by budget considerations than sealift requirements. It is a fatal flaw and one that can legitimately termed penny-wise and pound foolish. The acid test of how many "militarily useful" merchant ships are needed to meet a worst case scenario can be found by (1) specifying the sealift requirement, and (2) plotting the worldwide location of all currently active, militarily useful ships on a randomly selected day. Estimate the time it would take for the needed tonnage to be ready to load military cargo at DOD designated ports. Include ships of the Ready Reserve Force. This exercise was undertaken by the author in 1975 while employed by the U.S. General Accounting Office. It demonstrated conclusively that numbers alone are not the determining factor when estimating tonnage requirements in a fast breaking military contingency.

28. Within 10 years, if not sooner, there will be four, possibly six major railroads operating in the United States--two or three western roads and two or three eastern roads Two transcontinental roads will come in time. In a word, mergers in the railroad industry are not over. Large, financially strong railroads will be the base upon which U.S. owned/controlled, multimodal transportation firms, serving global markets, will rest.

29. U.S. Congress, Senate, Committee on Interstate and Foreign Commerce. *Hearings, Merchant Marine Study and Investigations (Transportation of Cargoes by the Military)* 81st Cong., 2d sess. 1950, p. 1071.

## **APPENDIX A**

### **The Players**

Historically, there have always been numerous players with respect to forming and sustaining a U.S. maritime policy. They are commented upon below but not necessarily in order of importance.

#### **Vessel Operators**

U.S. flag, U.S. crewed. These vessels are militarily useful in the context of 1996 sealift requirements. Included are containerships, barge carriers, RO-ROs, general cargo, small-medium size tankers, and passenger vessels.

U.S. flag, U.S. crewed. These vessels support the national economy but would not be requisitioned or requested in most conflict scenarios. Vessels include bulk carriers, combination bulk carriers (OBOs), Very Large Crude Carriers (VLCC), Ultra Large Crude Carriers (ULCC), and Liquid Natural Gas Carriers (LNGs).

U.S. owned, foreign crewed. These vessels are registered under select foreign flags and are referred to as Effective U.S. Controlled Shipping (EUSC). Agreements between owners and the U.S. government contemplate return of these ships to U.S. control in a national emergency.

U.S. owned, foreign crewed. These vessels are registered under foreign flags but are not covered by an agreement with the U.S. government and would not normally be subject to requisition in a national emergency. Seizing vessels under wartime authority or chartering vessels from this fleet is always an option.

U.S. government-owned (National Defense Reserve Fleet). Some 290-300 government-owned ships located on the Atlantic, Gulf and Pacific coasts. These vessels could meet some sealift requirements except for the long activation time required to make them seaworthy. These ships are not factored into any current contingency plans.

U.S. government-owned. (Ready Reserve Force [RRF]) This fleet presently consists of 89 militarily useful ships located along the three U.S. coasts. They are kept in varying degrees of readiness, that is, available within 4, 5, 10, 20, or 30 days of a mobilization notice. Thirty two ships will be available within 5 days. Ships in the highest state of readiness will be maintained in a reduced operating status (ROS) by a crew of ten. Ready Reserve Force vessels were broken out in the Persian Gulf War (1991), the Haiti deployment (1994) and the Bosnian conflict (1995).

U.S. government-owned. (Military Sealift Command) This agency is a component of the U.S. Transportation Command and provides ocean transport services to the Department of Defense. In addition to its fleet of 139 merchant-type ships, MSC operates logistics support vessels that support deployed naval combatants. [Fleet oilers (TAO), Combat Stores Ships (TAFS), Fleet Ocean Tugs (TATF)] A second responsibility

is operating special mission support ships such as oceanographic ships (TAGS), Cable Repair Ships (TARC), and Missile Range Test Support Ships (TAGM).

### **Shipyards**

U.S. shipyards (privately owned and operated). The Shipbuilders Council of America represents 39 shipyards and 24 shipyard suppliers. The American Shipbuilders Association represents six of the nation's large yards that primarily depend on government contracts for combatants, e.g. carriers, submarines, frigates. Major U.S. shipyards include: Newport News (VA), Bath Iron Works (ME), Avondale Industries (LA), Ingalls Shipyards (MI), National Steel and Shipbuilding (CA), Electric Boat (CN), Todd Pacific (WA) and Trinity Marine Group (MI).

Average monthly employment at shipyards in the Active Shipbuilding Base is 81,000+. Total shipyard employment is approximately 100,000. As of April 1995, 311 ships of all sizes and types were under construction in U.S. yards with a contract value of \$24,224.9 million. The great majority of large ship contracts were for government account, primarily for the U.S. Navy.

Foreign shipyards. Foreign shipyards play a significant role in the context of a world, private sector maritime infrastructure. As a general rule, they offer lower prices for building and repair as well as shorter delivery times. In 1981, operationally subsidized U.S. flag carriers were allowed to build foreign without penalty. Periodically, disputes arise over contracting U.S. government work to foreign shipyards.

At the beginning of 1995, over 1,000 vessels of 16 million metric tons were under construction worldwide. Approximate market shares were: Japan 55 percent, South Korea 16.5 percent, West Europe 14.5 percent. American labor rates were approximately \$30/hour which was comparable to those in Southern Europe. Other rates were Northern Europe, \$40/hour, Japan \$60/hour. There is general agreement that U.S. shipyards must combine increased productivity with their relatively low wage rate if they are to be major players in global shipbuilding.

U.S. Naval Shipyards. These government owned shipyards engage in conversion, overhaul and repair work. Naval shipyards have not engaged in new construction since 1968. In FY 1983, employment at the nation's eight naval shipyards was approximately 89,000.

In 1988 Congress created an independent commission to recommend military base closures, including naval shipyards. As of May 1995, none of the eight naval shipyards were closed although several were recommended for closure---Charleston, SC, Philadelphia, PA, and Long Beach, CA. When all of the planned closures are complete, anticipated naval shipyard employment is estimated to be about 32,000.

## **Maritime Labor**

Historically, maritime labor, in particular the seagoing unions, wielded political clout that far exceeded member numbers. However, as the U.S. flag merchant fleet diminished and once powerful, senior, maritime-minded Democrat congressmen were replaced for one reason or another, maritime union influence in Congress declined to its lowest point in 60 years.

Technology has also taken its toll on seagoing and shipyard workers. Larger ships with smaller crews has been the trend for over a quarter century while advanced technology, in particular, modular construction, has significantly scaled back shipyard employment. Add to this, the end of the Cold War with a concomitant to build fewer naval vessels and the Navy's continuing goal to have an in-house merchant marine, then the decline in maritime union membership is easily understood.

## **Shippers**

America is a trading nation and as such, shippers-importers and exporters-constitute a very powerful maritime interest group. There is little support within this group to "Buy American," that is, use American flag ships, in a highly competitive world where service and price are everything. This is not to suggest that U.S. flag operators cannot compete. They have in the past. But to compete successfully, requires government support. Shippers enter into the fray when a particular government policy in support of American flag shipping adds to the landed price of their product or merchandise, whether it be imports or exports. The largest and most powerful shipper groups are the National Industrial Transportation League, the National Grain and Feed Council, and the American Manufacturers Association.

The more competitive a world market, the more pressure will be exerted by shippers in opposing maritime support policies that make them less competitive. Agricultural producers and food processors for many years have vigorously resisted cargo preference legislation that benefited U.S. flag operators.

## **U.S. Navy**

In 1996, the U.S. Navy is the largest consumer of private sector maritime products-from nuclear powered aircraft carriers to shipping services provided by private sector ship operators. Additionally, Navy-titled merchant ships are manned by thousands of seagoing civil service employees.

At the peak of the Reagan administration buildup, the goal was a 600 ship navy. In 1996, the long term goal is a fleet of around 350 ships. Navy priorities are no longer to contain a Soviet Union submarine fleet and simultaneously keep the sea lines of communications open should a Warsaw Pact-NATO conflict erupt, but rather to project force where American security interests are threatened and to deploy force should regional conflicts involve U.S. forces. The Military Sealift Command is discussed in the text of this report and in Appendix B.

## Federal Maritime Agencies

It can be plausibly argued that actions by just about any federal agency will have an impact on one or more maritime players. Here, the discussion will be limited to the Coast Guard (Department of Transportation), the Federal Maritime Commission (Independent agency) and the Maritime Administration (Department of Transportation) The Corps of Engineers will be discussed under seaports.

Coast Guard. In peacetime, the Coast Guard is an agency within the Department of Transportation. In time of war it becomes, for all intent and purpose, a part of the Navy. The Coast Guard's peacetime responsibilities include:

- \*Protect life and property in waters under U.S. jurisdiction, including security of U.S. ports and waterways.

- \*Enforce U.S. maritime laws and international agreements to which the United States is signatory, including environmental laws, e.g. discharge of oil or other pollutants into U.S. waters.

Specific tasks include enforcement of safety standards for vessels, including vessel construction and manning, with respect to both U.S. law and international agreements. The Coast Guard operates the world's largest search and research organization, including ice breaking and ice reporting in international waters. A more recent mission is drug interdiction operations. The proposed FY 1996 Coast Guard budget is \$3.7 billion.

Federal Maritime Commission. The FMC is an independent federal agency. Its responsibilities are primarily in the economic area, that is, monitoring rates in international ocean shipping on routes serving U.S. ports. Prior to passage of the Shipping Act of 1984, the FMC was the primary enforcer and watchdog with respect to the activities (rates and rationalization of tonnage) of international shipping conferences serving American importers and exporters. In 1996, there is a high probability that the FMC will be abolished should deregulation of ocean shipping occur (the 1984 Shipping Act only partially deregulated the industry). If the FMC is abolished, questionable actions of ship lines and ship conferences would most likely be reviewed by the Anti-Trust Division of the Department of Justice. During the first Reagan administration, abolishing the FMC was actively considered.

Maritime Administration. The Maritime Administration is housed in the Department of Transportation. Earlier its functions were administered by an Assistant Secretary of Commerce for Maritime Affairs who also held the title of Maritime Administrator. As often as not the position of Maritime Administrator has been filled by a retired Navy admiral. The overall mission of the Maritime Administration is to promote the development and operation of U.S. flag shipping, including Great Lakes shipping.

Responsibilities include:

\*Administering the remaining operating differential subsidy agreements held by U.S. ship operators.

\*Administering Title XI of the Merchant Marine Act of 1936, as amended, which guarantees financing for constructing vessels in U.S. shipyards, both foreign and U.S. owned. The guarantor is the United States Government.

\*Administer/manage the National Defense Reserve Fleet and the Ready Reserve Force. Ready Reserve Force responsibilities are carried out in cooperation with the Military Sealift Command. In 1996 the RRF will be funded by the Department of Defense.

\*Operates the U.S. Merchant Marine Academy at Kings Point, New York and oversees federal assistance programs for six state maritime academies located in Maine, Massachusetts, New York, Texas, California, and Michigan.

\*Supervises cargo preference programs.

In February of 1995, the Secretary of Transportation outlined a reorganization plan under which most maritime administration functions would be handled by a new "Intermodal Agency" within DOT. The proposed FY 1996 budget allocates \$309 million for MARAD operations.

Department of State. This organization weighs in on maritime policy discussions when the issue is between the United States and one or more foreign governments. Examples include negotiations to end worldwide shipbuilding subsidies; the question of whether to restrict the export of Alaskan oil to U.S. flag vessels (the issue was settled in November of 1995 in favor of the restriction). The State Department opposed such restrictions. The issue of cargo preference for American ships, particularly food exports, and U.S. cabotage laws, e.g. the Jones Act, is also a contentious issue with the State Department usually in opposition to U.S. maritime interests.

The Department was a major player in the recent discussion of whether or not to include shipping services under the World Trade Organization's umbrella authority (shipping services were ultimately exempted). The Department also has input with respect to FMC rulings that involve directly or indirectly, foreign shipping interests. The State Department's Maritime Transport Section is the focal point for the department's position on various maritime issues.

### **International Maritime Organizations**

These inter-governmental organizations are related to and work with the United Nations. They administer and monitor, but not enforce, international agreements.

International Maritime Organization (IMO). The IMO, formerly the Inter Governmental Maritime Consultative Organization, monitors maritime conventions such as the

International Convention on Safety of Life at Sea, the Maritime Search and Rescue Convention, and the Convention on Prevention of Pollution of the Sea by Oil. The IMO adopted the International Safety Management Code which sets international standards for the safe operation and management of vessels. One hundred forty seven (147) nations belong to the IMO.

International Labor Organization (ILO) This organization monitors 16 maritime labor conventions, e.g., Convention Relating to Certificate of Competence for Able Seamen. One hundred sixty nine countries are members of the ILO.

The Law of the Sea Convention 1982 defines ocean space and how it is to be managed. The United States has not ratified this convention.

The Second United Nations Conference on Trade and Development (UNCTAD) established a Maritime Transport Committee as an intermediary with respect to questions of charges for maritime freight between ship owners and shippers. It is also charged to study ways to build up fleets of developing countries.

### **Shipping Conferences**

A shipping conference is made up of two or more liner shipping firms offering services over the same trade routes or trade areas. Membership in a conference is non restrictive with respect to country of registry. By mutual agreement, a conference will set rates and conditions of service. An open conference, by definition, is open to any vessel operator, while membership in a closed conference is determined by conference members.

The first shipping conference was established in 1879 over sea routes linking Great Britain and India. Most governments exempt shipping conferences from anti-trust action on the grounds that, on balance, conferences do more good than harm, rate stability being a positive consideration.

The Federal Maritime Commission is the designated watchdog with respect to conferences that offer services to the United States. The *U.S. Shipping Act of 1984* was generally deregulatory with respect to liner shipping services, although conferences were still allowed to exist. In 1994, a bitter controversy broke out between shippers and the Trans Atlantic Agreement (TAA), a conference which set rates across the North Atlantic. Shippers claimed TAA rates were excessive. The issue was taken up by the FMC and its counterpart within the European Union. Fifteen companies make up the TAA. They carry about 75 percent of the cargo moving on North Atlantic routes.

### **Seaports**

The nation's seaports do not directly impact on the fortunes of American flag operators and shipyards. As competitors for cargo, it is not in their interest to favor one flag over another.

A shipyard is considered a port asset, especially with regard to the jobs they provide. Recent decisions to close some naval shipyards brought vigorous responses from the seaports affected, e.g. Charleston, SC.

Aside from private sector initiatives to advance the fortunes of a particular port, ports can be affected in two ways by government action. First, most ports depend upon the Corps of Engineers for maintaining channel depths. With ever larger ships, a competitive port must have the capability of handling large vessels. Second, federal port user fees can influence a choice of ports by operators and shippers. Several years ago tonnage fees on vessels using a port were proposed to partly cover Corps of Engineer port costs. Methods for raising this revenue, however, were controversial. Small ports favored a general fund where all fees were deposited and distributed on a need basis. Larger ports favored a fee based on tonnage moved and/or containers handled. Volume would allow large ports to charge less for the same amount of Corps work while small ports with less volume would have to charge more.

In 1994, a tonnage fee was proposed for bulk ships entering/clearing U.S. ports as a means of funding operating subsidies for U.S. flag ship operators. While it passed the House of Representatives, it failed in the Senate. The bill was bitterly opposed by bulk shipper interests. In 1996, port user fees are unlikely to be proposed as a means of raising revenue for merchant marine support programs.

Vigorous competition among seaports will insure that private sector interests are served. However, national defense requirements can be a significant addition to port operating costs. For the most part, however, an efficiently managed port can handle defense needs. Should a greater port capability be required, the additional cost is properly a defense expenditure. Port security is another matter. In an age of terrorism, responsible port authorities (private, local, and state) must have a comprehensive security plan in place, either with or without federal participation. It is fair to say that a secure port will be a competitive port.

In 1995, some seaports came out in support of repealing U.S. cabotage laws that restricted foreign flag cruise ships from carrying passengers between American ports. Their motive was entirely economic and based on the assumption that removal of restrictions would allow a port to capture a share or increase its share of a growing cruise ship business. In their hurry to "cash in" some port authorities did not fully appreciate the risks involved in alienating merchant marine supporters in Congress.

### **Classification Societies**

These societies verify compliance of a vessel with respect to national and international safety standards. The most important responsibilities are vessel classification, design standards, and periodic surveys performed on vessels to insure compliance with standards. A vessel's insurability depends upon such compliance.

The three major classification societies are the American Bureau of Shipping(ABS), Lloyds Registry, and Det Norske Veritas. The umbrella group for all classification

societies is the International Association of Classification Societies. In the United States, the ABS and Coast Guard generally cooperate with respect to insuring that U.S. flag ships are in compliance with international and national requirements.

### **Lobbies**

With the exception of government agencies, most maritime players

are represented by privately supported lobbies located in Washington, DC. All are well funded and active with respect to providing input (their position) on proposed maritime legislation.

## **APPENDIX B**

### **The Military Sealift Command: A Nationalized**

#### **Merchant Marine**

In time of war or national emergency, the armed services have always had a significant ocean transport capability under their direct control. In World War II it was the Navy Transport Service and the Army Transport Service. When airlift replaced sealift in the movement of troops, much of the Army's rationale for maintaining an Army Transport Service no longer existed. Not so, however, with the Navy. Its Navy Transport Service became the Military Sea Transport Service and ultimately the present Military Sealift Command (MSC), an agency that has refused to disappear although several studies have urged that many MSC activities could as well be performed by privately owned and operated merchant ships. (1)

In 1987, the long sought consolidation of DOD's transportation agencies (MSC, the Military Airlift Command (MAC), and the Military Traffic Management Command (MTMC) seemingly took place. What occurred, however, was not the creation of a single agency but rather four agencies replacing the original three. In this respect a U.S. Transportation Command (TRANSCOM) was created to coordinate and oversee the three service commands. The MSC and MTMC retained their original names. The Military Airlift Command became the Air Mobility Command. Flag rank officers continue to head the subordinate commands. In 1996 an Air Force four star general heads TRANSCOM.

The present arrangement is probably not what the 1955 recommendation of the Transportation Task Force of the Hoover Commission had in mind when it recommended that the Secretary of Defense establish a Director of Transportation having no responsibility except those pertaining to traffic and transportation.

Fifteen years after Hoover Commission recommendations, the MSC survived the recommendation of a Blue Ribbon Defense Panel which recommended that MSC, MAC and MTMC be incorporated into a Logistics Command. In part the panel's recommendation stated:

The responsibility for providing supply distribution, maintenance and transportation services to the combatant forces in Unified and Specified Commands under the Strategic and Tactical Commands should be assigned to the unified Logistics Command. The Logistics Command should be assigned the traffic management and terminal management functions now allocated to the Military Traffic Management Command and Terminal Service (MTMTS), the Military Sea Transportation Service (MSTS), and the Theater Traffic Management agencies. The Military Airlift Command and Military Sea Transportation Command both should be assigned to the Logistics Command. The Logistics Command should be directed to develop, under policy guidance of the Assistant Secretary of Defense (Telecommunications), an ADP logistics system to encompass supply distribution elements that can be shared among the Services, and all

development and procurement activity toward separate ADP logistics systems not essential to support of near-term operations should be suspended. (2)

In 1995, the MSC employed 9,700 people worldwide--about two thirds aboard ship. It operated 143 ships in three forces: Strategic Sealift (90), Fleet Auxiliary (40), and Special Mission Support (13). The agency could also call upon the government-owned, Marad maintained, inactive Ready Reserve Force of 89 ships. The annual MSC budget is approximately \$2.3 billion.

In addition to its DOD titled tonnage, MSC, depending upon need, charters privately owned vessels. (3) Of the approximately 6400 people on board MSC ships, a majority are civil service employees or uniformed Navy personnel. Union crews, however, are employed on a number of MSC-controlled ships, generally those operated for the government by private contractors.

The Military Sealift Command mission as stated in 1995:

MSC's mission will continue to expand despite a down-sizing American military force. Ships will be added to the Strategic Sealift Force as U.S. bases abroad continue to close. The reduction of forces compounds the challenge to provide a rapid, strong military response. Additional surge and pre-positioned sealift will help to compensate for a vastly reduced U.S. presence overseas. (4)

In 1996, it can fairly be said that the Navy's view of who should be the primary supplier of merchant type shipping in time of war and peace has prevailed.

(1) For a detailed discussion of attempts to streamline DOD's military transportation functions see: *The Defense Transportation System: Competitor or Complement to the Private Sector* by Clinton H. Whitehurst, Jr. (Washington, D.C.: American Enterprise Institute, 1976), and *The U.S. Merchant Marine: In Search of An Enduring Maritime Policy* by the same author (U.S. Naval Institute Press, 1983).

(2) Blue Ribbon Defense Panel. Report to the President and Secretary of Defense on the Department of Defense (Washington, D.C U..S. Government Printing Office, 1970), p. 107.

(3) In 1995, MSC began awarding a series of long term charters to private sector tanker operators. The chartered vessels will replace nine older chartered vessels that were found to be unsafe and dangerous. A 1994 Senate Subcommittee severely criticized MSC management of these vessels. The new charters will not be classified as "public vessels" as was the case with the nine ships they are replacing.

(4) Defense Transportation Journal (February 1995), p. 25.

## APPENDIX C

### Global Alliances Between U.S. and Foreign

#### Airlines, 31 December 1994

**Strategic Alliances.** A strategic alliance can be characterized as one where two (or more) carriers integrate their operations on a global basis to the extent allowed by national laws.

A strategic alliance between two carriers, at a minimum, would include joint marketing and sales, shared facilities, code-sharing (1), and frequent flyer links.(2) Further integration of operations would occur with blocked space agreements, revenue pooling, route planning, including shared marketing data, and standardized agreements, e.g. maintenance and services.

A strategic alliance can include equity arrangements, that is, one carrier owning stock of its partner or partner airlines owning shares of stock in each other.

A complete alliance would be a true merger between carriers. This is not, however, permitted under current U.S. law or the laws of any developed nation Examples of strategic alliances include:

**Northwest Airlines-KLM Royal Dutch Airline.** This alliance included a 25% equity investment in Northwest by KLM. Their code-sharing network links 88 U.S. cities with 30 European and Middle East cities. Since the alliance, Northwest-KLM market share on trans-Atlantic routes has increased from 7 percent to 11.5 percent in 1994, adding 350,000 passengers a year. KLM's profit increased four-fold to \$30 million in its fiscal year ending March 31, 1995.

**British Airways-U.S. Air-Qantas.(3)** British Airways purchased a 24.6 percent stake in U.S. Air and a 25 percent stake in Qantas.. The BA-U.S. code sharing network links 52 U.S. cities with BA destinations worldwide. The number of code share passengers booked increased from 8,439 in 1993 to 67,593 in 1994.

**United Airlines-Lufthansa.** Their code-sharing network links 25 U.S. cities with 30 European and Middle East cities. United Airlines expects the UA-LH agreement reached in 1994 to increase traffic by 219,000 between 1994 and 1995. United Airlines also has regional alliances with British Midland and Ansett Australia. Lufthansa also is party to several regional alliances.

**Delta-Swiss Air-Singapore Airlines.** This alliance includes equity swaps with some partners. Delta also has code-share arrangements with Aeroflot, Aeromexico, Austrian Airlines, Sabena, and Japan Airlines. (4)

**Regional Alliances.** The difference between a strategic alliance and a regional alliance is the scope of the operation. Strategic alliances serve global markets while a regional

alliance is characterized by service on a limited number of routes from one nation to another.

Point Specific Alliances. These alliances involve service between city pairs. Examples include: Continental Airlines-Scandinavian Airlines, Delta-Japan Airlines, United Airlines-Ansett New Zealand, and U.S. Air-Alitalia.

There were 50 active alliances of all types between U.S. and foreign carriers as of December 31, 1994. Of these, three were considered strategic (Delta-Swiss Air-Singapore Airlines not included), nine regional alliances and 38 point-specific. (5)

As of February 1995, there were 72 bilateral agreements between the United States and foreign countries.

Global airline alliances will not only continue to exist but expand. The results thus far indicate that alliances generally increase revenues and traffic for alliance partners, particularly those which include equity interests. There is a 73 percent survival rate among alliances that include ownership as opposed to a 26 percent survival rate of alliances where an airline does not have a stake in the alliance partner. (6)

Most alliances entered into in 1995 are not cited above. This, however, does not alter the point being made---global alliances will play the dominant role in the movement of freight and passengers by air in the 21st century. That many alliances will be between multimodal firms with airline components is a certainty.

(1) Code-sharing is an arrangement wherein one carrier uses its designator code (e.g. UA-United Airlines) to market flights of its partner carrier as if the foreign carrier's flights were its own.

(2) Standard interline agreements and through ticket handling, scheduling, facility sharing, and joint promotions do not require U.S. government approval. Code-sharing, revenue pooling, network planning, setting of fares, and foreign ownership in the carrier of another nation, does require approval.

(3) British Airways other equity investments include a stake in TAT, and Deutsche BA.

(4) Strategic, regional and point-specific code-sharing arrangements are described and commented upon in detail in: *U.S. General Accounting Office, International Aviation: Airline Alliances Produce Benefits, but Effect on Competition is Uncertain* (Washington, D.C.: U.S. General Accounting Office, 1995) GAO/RCED-95-99.

(5) *Ibid.*

(6) *Investor's Business Daily* (August 21, 1995) p. A4.

## APPENDIX D

### Seagoing Wages

On average, crew expenses account for about 11 percent of the cost of door to door container delivery. Comparative crew costs in thousands of U.S. dollars per month for a containership operating under the U.S. flag, European flags, and Asian flags are approximately: (1)

<u>European</u>	<u>Asian</u>	<u>United States</u>
\$80,000	\$95,000	\$340,000

Monthly base wages, overtime and benefits for selected shipboard jobs on a containership under different flags: (U.S.\$)

<u>Position</u>	<u>U.S. Flag(a)</u>	<u>European(a)</u>	<u>Asian(a)</u>	<u>ITF(b)</u>
Master	\$32,653	\$9,697	\$4,331	\$2,884
2d Officer	18,727	7,036	1,979	1,491
Radio Officer	5,142	5,475	2,874	1,491
1st Engineer	23,229	8,425	2,796	1,862
2d Engineer	18,848	7,845	1,979	1,491
Chief Steward	9,053	7,619	2,118	1,491
Able Seaman	6,022	4,510	1,610	856

(a) Source: Maritime Administration "Competitive Manning of U.S.-Flag Vessels."

(b) Source: International Transport Workers Federation. Note: ITF wage scales apply to approximately 20 percent of flag of convenience vessels. Non-ITF crews are paid significantly less.

Another wage comparison was made by former Maritime Administrator, Warren G. Leback (2)

<u>Position</u>	<u>Hourly ITF Rate (\$)</u>	<u>Above/Below U.S. Minimum Wage</u>
Master	\$12.00	\$6.75
2d Officer	6.21	0.96
Radio Officer	6.21	0.96
1st Engineer	7.76	2.51
2d Engineer	6.21	0.96
Chief Steward	6.21	0.96
Able Seaman	3.57	(1.27)

## **Comment**

It was suggested in the text that if it is granted that the cost differential of maintaining a sufficient number of active, militarily useful, merchant ships (and their crews) is a national security expenditure, then the better comparison is between U.S. and foreign military personnel

There is little doubt that U.S. crews are better trained and held to higher standards than those of any other country. Again, as suggested in the text, the most enlightened competitive strategy is to have crew sizes on U.S. vessels basically set by what is required for the safe navigation of the vessel. In most cases, while this would mean a reduction in crew size, it would also mean a significant increase in crew productivity.

(1) "Work on the Waves," *Journal of Commerce* (August 8, 1995) Original sources cited in the article were the Maritime Administration and the International Transport Workers Federation.

(2) Leback, Warren G. "Letters to the Editor," *Journal of Commerce*, August 14, 1995

## **APPENDIX E**

### **The Last Clear Chance For An Enduring Maritime Policy**

A principle in tort law that is applied by some courts is the "Last clear chance doctrine." Simply put, the negligence of the party having the last clear chance (last opportunity) to avoid an accident is solely responsible for the accident, notwithstanding the negligence of the other party.

This principle was once firmly established in admiralty courts when responsibility for a collision at sea was being determined. Gradually, however, the courts moved away from the position that the ship having the last clear chance to avoid a collision was solely responsible if a collision occurred. The more recent doctrine is that when the negligence of both parties continues right up to the time of the collision, then both parties are negligent (1) In an American case, the court said "Rules of navigation are ordained to preserve life and property and not to promote and authorize collisions. Even flagrant fault committed by one of two vessels approaching each other from opposite directions will not excuse the other from adopting every proper precaution to prevent a collision." (2)

The compromise between a strict adherence to the last clear chance doctrine and the shared negligence rule is embodied in Article 27 of the International (and Inland) Rules of the Road. Article 27 states: In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (3) Generally, under this rule, a vessel may depart from the rules in some situations without the departure being held to be a fault and, indeed, may be found at fault for not departing from the general provisions of the rules..

The analogy of Congress as a "vessel" having a last clear chance to avoid an impending collision, that is, to prevent the United States from sliding into the role of a minor commercial maritime power, seems reasonable. Congress alone has the power to act and it is of little consequence as to which political party, politician(s), federal agency, private sector entity, or presidential administration, was to blame in setting our maritime industries on a collision course, one that unless changed, will lead to the destruction of the United States as a maritime nation. There is more than enough negligence to go around.

With their assent to power, the Republican Congress has charted a course which re-defines the role of government in the affairs of the nation. The heart of their agenda is to reduce the size and authority of the Federal Government and bring federal revenues and expenditures into balance. These goals have the support of the majority of Americans. However, as Republican congressional leaders well know, and the general prudential rule tells us, there are times when a set course, no matter how carefully plotted, must be changed in order to avoid disaster. Essentially, this means that a well defined, cost effective, maritime support program is deserving of federal funding even as the process of downsizing the federal bureaucracy and the federal budget continues.

Should merchant marine support legislation be put off until the 105th Congress in January 1997, the collective "memory loss" of the various committees, knowledgeable individuals, including committees staff, and the countless pages of testimony at hearings, would be a heavy blow to Congressional maritime supporters.

(1) An excellent discussion of the last clear opportunity rule is found in *Maritime Law* by Christopher Hill (Pitman: 1981).

(2) *The America*, 92 U.S. 432,438, 23L Ed. 724. Cited in *Cases on Admiralty* by George C. Sprague and Nicholas J. Healy, 3d ed. p. 709.

(3) *U.S.C.A. 112 and 212*.

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## EPILOGUE

As of 31 January 1996, the Congress had not passed the enabling legislation necessary to ratify the OECD accord to end shipping subsidies. The European Union, South Korea and Norway had already signed the agreement. Japan had not.

Differences of opinion surfaced as to the effect the OECD agreement would have on Jones Act provisions requiring the U.S. domestic tonnage be built in American yards. The U.S. position is that the OECD agreement will not materially affect U.S. shipyards. The European Union argues that American shipyards building under the Jones Act could face financial counter-measures when bidding on foreign contracts.

At the end of January 1996, the Senate version of the Maritime Security Act (S 1139) had not been acted upon. The House had already passed its version of the bill (HR 1350).

In December 1995, the Interstate Commerce Commission, the nation's oldest regulatory body, ceased to exist. Remaining responsibilities will be transferred to other government agencies.

In a 15 April 1996 letter to colleagues in the House of Representatives, the

entire membership of the House Merchant Marine Oversight Panel reaffirmed its support for the so-called Jones Act (Section 27, Merchant Marine Act 1920). The act restricts the movement of freight between

American ports to U.S. crewed, U.S. built tonnage.

As of 1 June 1996, the Congress had not acted on HR 1350, the Maritime

Security Act of 1995. The act would provide \$1 billion in subsidies over a 10 year period for approximately 50 militarily useful merchant ships.

As of 1 June 1996, the Congress had not acted to "sunset" the Federal Maritime Commission.