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by

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DEFINING AMERICA'S MILITARY SEALIFT CAPABILITY: U.S. OR FOREIGN FLAG

By

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

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DEFINING AMERICA'S MILITARY SEALIFT CAPABILITY: U.S. OR FOREIGN FLAG SHIPS?

Author's Note: *This paper is largely predicated on the Department of Defense's worst case scenario, that is, the United States must fight and win two near simultaneous major regional conflicts. In February of 2001, newly elected President George W. Bush announced a top to bottom review of DoD military and personnel requirements as well as a review of likely threats to the United States in the 21st century. When completed, these reviews may or may not validate DoD's present worst case scenario. Any significant change with respect to what are and are not likely future contingencies will also require a top to bottom review of U.S. sealift requirements.*

Introduction

Sometimes words are more important than the reality they describe. Such is the case with respect to the Maritime Administration's (Marad) year 2000 decision to count everything that floats when describing the nation's maritime posture. In about the time it takes a con artist to hide a pea under a walnut shell, the U.S. flag fleet increased from 251, excluding ocean carriers, ocean going ships (1000 tons or over, self propelled, deep draft ships) to approximately 37,000+ vessels of which approximately 29,000+ were cargo carrying.(1)

When questioned as to whether these 29,000 or 37,000+ additional vessels would be available to support a Persian Gulf type contingency, the then Maritime Administrator replied "Probably not," but added that their crews would be available. The implied assumption that crews on the Staten Island ferry could quickly fill crew vacancies on a LASH or RORO, or that barges in the coastal and inland water trades would be equally efficient in moving military cargo across oceans to destinations thousands of miles from mainland U.S. load out ports, is disingenuous at best. At worst it encourages a false sense of security with respect to our military sealift capability.

Whether this new definition of America's maritime assets in any way relates to its military sealift capability is an unanswered question. Granting the question, is it not time to reexamine America's maritime posture for what it is, and not what one might wish it to be?

Table 1 indicates the potential pool of militarily useful, U.S. flag, ocean going tonnage as of 1 October 2000.

TABLE 1

**U.S. FLAG, OCEAN GOING, MILITARILY USEFUL MERCHANT VESSELS(a)
(Self propelled vessels 1000 gross tons and over)**

Privately owned ships in foreign trade. Includes vessels in the VISA program. Does not include dry bulk or tug-barge vessels. — — — — — **85**

Privately owned ships in coastal and non-contiguous trades. Does not include dry bulk or tug-barge vessels or passenger vessels. Includes vessels in the VISA program. — — — — — **100**

Military Sealift Command(MSC) vessels. Includes 15 pre-positioned ships, 13 maritime pre-positioned ships, eight pre-positioned logistics ships, 2 aviation logistics ships in reduced operating status and 31 chartered ships in the Sealift Program. Does not include naval auxiliaries operated by MSC or Special Mission Ships. — — **69**

Maritime Administration Ready Reserve Force (RRF) ships. Includes Liquid carriers, RoRos, containerships, LASH and break bulk freighters — — **88**

TOTAL — — 342

(a) Source: Maritime Administration, Office of Statistical and Economic Analysis. “Deployment of U.S. Flag Oceangoing Self Propelled Merchant Vessels of 1000 gross tons and Over as of October 1, 2000,” “Cargo Carrying U.S. Flag Fleet by Areas of Operation, January-June 2000.” and Military Sealift Command, *Defense Transportation Journal* (April 2000).

Some authors exclude liquid carriers when defining “militarily useful” vessels. This is an oversimplification. Liquid carriers are militarily useful. The necessary caveat is to identify this tonnage by amount and type when describing total tonnages.

Approximately 100+ ships are enrolled in the Voluntary Intermodal Sealift Agreement (VISA) program, 47 of which receive a government subsidy under the Maritime Security Program (MSP). When called upon MSP ships must contribute 100 percent of their capacity (ships and support equipment). Non-MSP VISA shipping is required to contribute only a portion of their assets in stages. The VISA program is activated only after MSC, RRF and volunteer ships (U.S. and foreign) are deemed insufficient. The present program includes containerships, RoRos, LASH and break bulk tonnage.

The primary mission of naval auxiliary (civil service crewed) ships operated by MSC is to support deployed naval forces. While some of these vessels could be diverted to support a contingency, most would continue in their fleet support role.

In evaluating the above pool of shipping in the context of national security requirements, several considerations must be factored into any conclusion respecting adequacy. That is:

*Recognize that 111 or 30 percent of total deep water ships are liquid carriers. This number exceeds military requirement in most planned for contingencies.

*Recognize that relying on pre-determined activation schedules for older RRF ships involves risk.

*Recognize that some MSC pre-positioned ships may be kept in place to meet contingency requirements in their geographic area or may be too distant to contribute to initial sealift surge requirements in other areas.

*Recognize that on any given day a large part of the foreign trade, commercial tonnage will be scattered worldwide and that up to 20 days may be required to have these ships at designated mainland U.S. loadout ports.

It should thus be apparent that no formula or computer program can accurately estimate how many of the above 342 ships could (a) meet contingency-specific military requirements, and (b) be available at U.S. loadout ports within 5-10 days to meet initial surge requirements. Knowledgeable individuals could easily differ in their estimates by as much as 50 ships.

Further considerations when evaluating U.S. flag tonnage in a national security context include:

The type of contingency to be supported, i.e., one where there is some time, but not an infinite amount, before hostilities commence (Persian Gulf War, Kosovo), or fast breaking contingencies where time is crucial in deploying personnel and material to the combat area.

Will the military buildup be large and sustained over a long period of time, or a smaller buildup but open ended with respect to time? Or something in between such as the Persian Gulf War?

Degree of risk to shipping, that is, little or no risk (Korea, Vietnam, Kosovo) or a high degree of risk such as a Taiwan Strait conflict between the United States and the People's Republic of China.

Will the contingency be a U.S. "go it alone" conflict or will there be support from allies?

What will be the attitude of foreign governments, friendly or otherwise, toward the conflict?

What will be the world demand for shipping at the beginning of the conflict?

All things considered -- Can the United States win different types of future conflicts using only its national flag shipping assets? Unfortunately, no definitive answer is possible largely because in past conflicts (Korea, Persian Gulf, Kosovo, and early on Vietnam) the United States did not have to “go it alone,” that is, rely entirely on its national flag shipping. Chartered foreign flag tonnage, and in some cases allied shipping, supplemented American sealift assets. (2)

If it logically follows that availability of chartered foreign flag shipping is a consideration in planning for future contingencies, the question becomes -- Can the United States reasonably expect to charter needed foreign flag ships in different types of conflicts, in the context of timeliness, numbers and vessel type? And at what cost?

Table 2 identifies broadly categorized, likely contingencies and estimates the probability of chartering sufficient foreign flag shipping to make up a U.S. sealift shortfall. Premium charter rates are assumed.

TABLE 2

**PROBABILITY OF CHARTERING SUFFICIENT FOREIGN FLAG
TONNAGE IN A CONTINGENCY**

Contingency*	Probability of Chartering Supplemental Foreign Flag Tonnage**
Two Major Regional Conflicts (e.g. Korea, Vietnam)	
U.S. alone	Low
U.S. with allies	Moderate
One Major Regional Conflict (e.g. Persian Gulf War)	
U.S. alone	Low to moderate
U.S. with allies	Moderate to high
Two Minor Conflicts	
U.S. alone	Moderate
U.S. with allies	High
One Minor Conflict (e.g. Kosovo)	
U.S. alone	Moderate to high
U.S. with allies	High

* With only minor changes in detail and circumstances, the number of possible contingencies is infinite.

** Probability estimates are assumed by author. Major conflicts are based on a go it alone Taiwan Strait conflict with the People’s Republic of China and a Taiwan Strait conflict in addition to a major deployment to the Republic of Korea. Reference: Whitehurst, Clinton H., Jr. “American Military Options in a Taiwan Strait Conflict, *Naval Engineers Journal* (July 1999), p. 77.

If the above probabilities are accepted as reasonable estimates in situations where statistical data is lacking, the greatest risk with respect to obtaining sufficient sealift is when the United States goes it alone in one major or two near simultaneous major conflicts. Only in one minor, go it alone, conflict can the U.S., with some degree of confidence, count on foreign flag ships to make up a deficit should it occur.

All things considered it comes down to (1) maintaining our present sealift capability of approximately 350 vessels, or around 230 general cargo vessels in various categories and states of readiness, or (2) increase that capability and be less dependent on foreign flag shipping.

Uncertainties With Respect to U.S. Flag Sealift in 2001

In 2001 the first ships that would be called up in the Department of Defense's activation schedule for contingency sealift are 36 MSC pre-positioned ships and 50+ RRF ships maintained in a high state of readiness by 9-10 permanent crew members. Their planned breakout time is 5 days or less. Next in order are volunteered U.S. and foreign flag ships. Only when volunteer ships do not meet lift requirements is the MSP/VISA program activated.

Minor contingencies such as Kosovo have not fully tested the responsiveness of the MSP/VISA program and later stages in the activation schedule, that is, the MSC Sealift Program and requisitioning of U.S. flag and U.S. controlled foreign flag shipping.

The fact that complete activation of all U.S. sealift assets has never occurred is the *greatest uncertainty* should a major conflict or two near simultaneous major conflicts occur. To assume that everything will go as planned is to ignore Murphy' Law and the lessons of history.

Other uncertainties with respect to the availability of U.S. flag ships in a contingency include:

The present age of ships in the MSP/VISA and RRF programs. In 2005, when the present MSP contracts expire, the average age of the 36 containerships in the program will be 19 years, 5 LASH vessels 32 years, and the remaining 6 car carriers 14 years. In 2001 the average age of RRF ships is 32+ years. Four years hence many of these ships will be 40 years old.

The total number of U.S. flag ships in foreign trade, absent any government incentives to make such trades profitable, could decline by as many as 50 ships by 2008.

Continued attempts to repeal or modify the Jones Act and the earlier U.S. Passenger Vessel Services Act by vocal, well funded, and politically astute interest groups. In 2001 there is no indication of any diminution in their efforts to open up the domestic trades to foreign flag and/or foreign built tonnage.

Cargo preference laws remain controversial. The U.S. General Accounting Office estimates that higher cost U.S. ships increase federal shipping costs by almost \$600 million a year. The U.S. Exporters Competitive Council, an ad hoc group, argues that Marad should make it easier to obtain the needed waivers to use foreign flag tonnage.

Ability to crew RRF ships. In the Persian Gulf War 79 RRF ships were broken out. Seagoing unions responded by encouraging former mariners to return to sea. In 2001 ocean going U.S. flag ships provide less than 9,000 billets. Should the foreign trade fleet decrease significantly over the next five years, billets will decrease proportionately as will the seagoing pool of active seamen.

Exacerbating the near term shortage of seamen is the fact that ships are getting larger and crews smaller. One 6000 TEU containership has twice the capacity of containerships built just 15 year ago. Thirty containerships of 6000+ TEU will be at sea by the year 2002.

Increasing U.S. Sealift Capability

Actions that can be taken to increase U.S. sealift capability and lessen uncertainty generally fall into two categories. The first is when additional funds are directly budgeted for sealift assets. The second, but equally important, are actions and programs undertaken by government and the various maritime interests groups in the private sector.

Direct Outlay of Federal Funds

*Increase the number of MSP ships to 75 militarily useful vessels, excluding liquid carriers. No vessel over 15 years old would be initially enrolled in the program. Vessels over 20 years old would be phased out depending on need for particular vessel types. As these changes are implemented, extending the MSP contract period beyond 10 years becomes an option. Implementing these recommendations would go a long way in insuring that the government is not funding ships well beyond their useful lives.

A determination would be made as to the advisability of including U.S. flag passenger vessels in the MSP/VISA programs. Not as point to point transports but as offshore bases in combat areas. One has only to remember the 239 dead marines that were quartered ashore (Lebanon 1983) when they might have been quartered in vessels lying offshore with little, if any, degrading in their assigned mission as peacekeepers.(3)

*Increase the number of pre-positioned fast sealift ships from 8 to 12 vessels.

*Upgrade the Ready Reserve Force (RRF), not in numbers but in quality. The RRF would be limited to 75 ships with breakout times of 10 days or less. Breakout times would be periodically checked by no warning tests. No ships in the RRF would be more than 30 years old. Transfer of ships from the MSP/VISA programs would be encouraged by financial incentives, if necessary. Maintenance contracts for RRF vessels that fail the prescribed breakout times would be subject to automatic review and cancelled if appropriate. Disputes with respect to maintenance costs would be settled by arbitration.

* A federally funded merchant marine reserve of unlicensed and licensed mariners. Upgrading the skills of retired unlicensed personnel and training new unlicensed personnel would be a responsibility of schools such as the Seaman's International Union's Paul Hall Center for Maritime Training and Education. Graduates of the U. S. Merchant Marine Academy and state maritime schools (California, Great Lakes, Maine, Massachusetts, New York, Texas) already constitute a sufficient pool of licensed personnel. The program would be patterned on the National Guard concept with respect to personnel and compensation. Enabling legislation would address the issues of premium pay/life insurance for seaman in combat areas as well as predetermined rules for draft deferment if a draft is in effect. The program would be jointly administered by the Military Sealift Command, the Maritime Administration, and seagoing unions.

*Increase Title XI funds from its present \$29.9 million to \$50 million. Title XI funds contribute to insuring an active ship repair capability as well as provide incentives for U.S. yards to become internationally competitive. In a prolonged major conflict such as a Taiwan Strait war between the United States and the People's Republic of China, repair capability could become decisive.

Legislation, Administrative Action, and Private Sector Initiatives

*Strictly enforce cargo preference laws. Preference cargo has declined since the end of the Cold War. Present law requires international government-owned or financed cargo be entirely or partially moved on U.S. flag ships. In the past, preference cargo was an important consideration in keeping American tonnage employed. Today it is critical. While the Maritime Administration can grant waivers when U.S. flag tonnage is not available, when waivers are granted, the burden of proof (need) should rest squarely on Marad. In 1997, a typical year, Marad granted over 300 waivers.

*The Jones Act and the U.S. Passenger Vessel Services Act of 1886 must be kept in place without modification. Proponents of repeal having failed in the Congress are now offering a number of compromises. e.g. allow foreign built ships into the coastal bulk trades.

One author has noted that coastal shipping could provide an alternative to highway congestion along Interstate 95 and other coastal interstate highways. (4)

The preferred vessel for such a trade is the RoRo, which is also high on DoD's sealift wish list. Suggested here is a U.S. General Accounting Office review of the option, not only with respect to highway congestion, but improving the U.S. transportation infrastructure in general. Multimodal transportation that include ship, rail and trucking assets have proved viable in the past.

The most persuasive argument for reserving the domestic trades to U.S. flag, U.S. built ships is the unquestioned fact that domestic shipping firms will not pay higher U.S. yard costs if they believe the reservation laws are negotiable. The end result is older ships and eventually no ships at all.

Recent contracts for two RoRos for Totem Ocean Trailer Express to be employed in the mainland-Alaska market and a number of contracts for tankers in the domestic trades can largely be attributed to the unwillingness of Congress to amend the Jones Act.

*Eliminating shipbuilding subsidies worldwide was initially proposed by the United States through the Organization for Economic Cooperation and Development (OECD). The enabling treaty has since been ratified by the European Union, Japan and South Korea. Disagreement between large and small shipyards has held up U.S. ratification. This stalemate has been tolerated by Washington for purely self serving political reasons. The United States government has more than enough leverage to effect a compromise. In this respect, large yards depend on Navy contracts; small yards on Jones Act tonnage and Title XI.

Shipyard and seagoing unions have a common interest in supporting this agreement or any other initiative that makes U.S. yards internationally competitive. The extent of the cost problem can be seen when worldwide ship repair costs are compared. Using Singapore as a base (100), U.S. yards repair costs come in at 170.

*Eliminating major differences between U.S. and European Union regulations respecting international shipping should be aggressively pursued by the Federal Maritime Commission. Carrier pricing of joint inland rates, not allowed in Europe, but legal in the United States is a case in point.

*Continuing disputes between the Military Sealift Command and private operators over how much government owes for services provided are just one level above being childish.

The 1904 Cargo Preference Act prohibits shipping companies from charging the government more than the market price for similar services. The dispute hinges on—when are services similar as between military and commercial cargo. While it is a fair question, it is not a question impossible of solution. When agreement cannot be reached compulsory arbitration is the remaining option. A better solution would be for the MSC and operators to commit to print every conceivable dispute together with the agreed upon solution, i.e., to greatest extent possible replace uncertainty with certainty.

*The present arrangement of allowing U.S. based, managed, and operated shipping companies that are a subsidiary of a foreign owned parent company to continue to receive subsidies under the MSP/VISA program should be continued. It has proved to be a win-win situation for all concerned. At present, 31 of the 47 ships in the MSP program are operated by U.S. based, foreign owned firms.

*Efforts should be continued to level the playing field between U.S. operators and their foreign counterparts with respect to tax treatment in their respective countries. e.g. allowed accelerated depreciation of U.S. shipping firm assets.

*The question remains contentious as to what national security benefit, if any, is derived from U.S. owned, foreign flag shipping. The long standing argument by these shipowners is that their ships are committed to the Defense Department in times of war or national emergency. However, with respect to DoD's priorities in calling up ships in a contingency, so-called Effective U.S. Controlled foreign flag shipping is last on the list.

After pre-positioned and Ready Reserve ships are called up, next in order are volunteered U.S. and foreign flag ships, followed by VISA activation, then MSC Sealift Program ships and finally requisition of U.S. flag and EUSC ships. The EUSC concept must conform to reality or be abandoned entirely.

One of several changes in U.S. law sought by EUSC shipowners is that they be allowed to defer taxes on profits that are reinvested in their business. One way to enhance their claim that EUSC ships are national security assets is to commit their militarily useful tonnage, or at least a part of it, to an earlier call-up. An appropriate place would be Stage III in a VISA activation, that is, when unforeseen requirements are identified.

*The United States must remain actively engaged in the so-called FastShip program. Contracts are now pending for four 40 knot RoRo vessels to be built by NASSCO in San Diego. With all military type spending under review, merchant marine supporters in the Congress must remain vigilant to insure the program is not a victim of budget cuts down the road.

*The United States must aggressively support efforts by the International Labor Organization (ILO) to update wages and living standards for seamen worldwide. Any opportunity to lessen the difference between U.S. and foreign labor cost, irrespective of the reason, is a worthwhile undertaking.

As a general rule, maritime interest groups will only invest time and effort to forward their own agendas. This need not be a problem if a particular interest group also recognizes that achieving its own goal or goals solves only a part of the problem of acquiring and sustaining an adequate and viable U.S. flag ocean fleet. Thus, when an interest-specific goal is achieved it should not be at the expense of another interest group or of the U.S. maritime community as a whole. Bringing this about, however, will require a degree of cooperation not seen since passage of the Merchant Marine Act of 1936.

Summary

This paper has argued that in future major conflicts where the United States may have to go it alone, the foreign flag ships needed to make up a sealift shortfall might not be available in terms of timeliness, numbers and vessel type. The logical counter-argument to this assertion is that “money talks,” i.e., if charter rates are high enough the needed tonnage will be there. However, a key assumption to this response is that the respective foreign governments will not intervene, that is, forbid chartering of their national flag ships. Taken together, the above points of view raise the question—at what point does it pay to own rather than rent sealift assets? The answer depends on how much foreign flag tonnage will be needed should the most demanding scenario in terms of sealift requirements materialize which in turn defines two possibilities. One is where U.S. flag, privately owned shipping is so inconsequential in defense planning that funds must be committed to increase MSC’s general cargo fleet and Marad’s RRF fleet to make up the shortfall. This is a high cost option. America’s sealift capability would then be made up of government owned tonnage supplemented by chartered foreign flag ships at, most likely, premium charter rates.

A second possibility is where the federal government supports a private sector merchant marine, that together with DoD and Marad assets, would be sufficient to meet a major contingency with little or no dependence on foreign flag ships. This also is a high cost option.

Suggested parameters for a U.S. flag sealift capability that is only marginally dependent of foreign flag ships are:

A MSC fleet of 85 pre-positioned, general cargo vessels, including chartered tonnage whose average age does not exceed 20 years.

A RRF fleet of 75 ships capable of being broken out in 10 days or less. The breakout capability would be continually tested by no warning drills.

A private sector merchant marine composed of 150 general cargo ships in foreign and domestic trades. The average age of this fleet would be no greater than 15 years. The present MSP/VISA program is an excellent framework to accommodate this shipping. The problem is too few ships, ships that are approaching the end of their useful lives, and contracts which discourage participation in the program.

An always current roster would be maintained of foreign flag tonnage that would likely respond to charter offers, particularly in worst case scenarios. History would be a guide in identifying this shipping. Pre-set contracts would include allowances for premium charter rates, if required, vessel insurance, and a formula to insure and compensate seamen in combat areas.

Conclusion

Almost without exception knowledgeable individuals predict a significant decline in U.S. flag participation in foreign trade if present policies are allowed to run their course. This fleet, already small compared to other maritime nations, may well be half its present size by the year 2008.

The conclusion reached in this paper is that if this deterioration continues, one way or another, American military sealift will increasingly depend on foreign flag ships. This poses the question — Will this tonnage be available in terms of numbers, timeliness, and vessel type? Argued here is that as the U.S. flag fleet decreases, depending on foreign flag ships becomes more and more a risky proposition, particularly in major conflicts where the United States might have to go it alone.

The proposed solution is to build on proven concepts—the MSP/VISA program, the RRF concept, and MSC's pre-positioned ships. While this solution will not guarantee the sealift need, shortfalls should be manageable. It is, in terms of decision theory, one of least regret.

The next question is—Can the political will and funds be found to make it happen? If one looks only at events that occurred in 2000 with respect to the merchant marine and merchant mariners, the outlook would seem promising.

*The Bush administration and key members of Congress are considered to be pro merchant marine/maritime community.

*Politically powerful interest groups support an American flag merchant marine. e.g. shipyards and their suppliers, seagoing and shipyard unions, and the Navy League of the United States, probably the most effective of the civilian based military support organizations, and the American Association of Port Authorities, among numerous others.

*Passage of the Transportation Worker Fairness Act which gives a tax break to merchant seamen.

*A House of Representatives resolution honoring merchant marine veterans.

*The decision to include merchant seamen in the planned World War II memorial in Washington, D.C.

*Shippers and carriers working together to maximize benefits of the Ocean Shipping Reform Act passed in May 1999.

*The recent decision by domestic trade operators to invest in new general cargo ships and tankers built in high cost American shipyards.

*The decision of the private sector to invest in U.S. flag cruise ships.

*A constant reiteration by the nation's highest rank uniformed personnel of the importance of a U.S. flag fleet.

*A National Maritime Memorial Day Proclamation (May 22) issued by the President of the United States as authorized by a joint resolution of Congress on May 20, 1933. The year 2000 proclamation by the President urged all Americans to observe the day with appropriate programs, ceremonies, and activities and by displaying the flag of the United States in their homes and communities and that all U.S. flag ships dress ship on that day.

As noted earlier, America's maritime community must cooperate to insure a long term, viable, U.S. flag merchant fleet. If they do not and pursue their own separate ends, the words of a long ago patriot should give pause—"If we do not hang together, we will all hang separately."

ENDNOTES

(1) Included in this total are ferries, tugs and towboats, crew boats and utility vessels serving off shore oil rigs, inland barges, and Great Lakes ships and barges.

(2) During the Kosovo buildup, 22 of 31 dry cargo ships were foreign flag.

(3) Delta Queen Coastal Voyages, a subsidiary of American Classic Voyages, plans to build five coastal cruise ships designed to carry 226 passengers. Two, the *Cape May Light* and *Cape Cod Light* will begin their inaugural cruises in May 2001. American Classic Voyages will also operate two 1900 passenger ships being built under the Project America initiative passed by Congress. Two existing ships, the *SS Patriot* and *SS Independence* will serve the Hawaiian Islands cruise trade.

(4) Kestleoot, Robert W., "Let the New Millennium Begin," *Almanac of Seapower 2001*, pp. 33-35.

FACING UP TO ANOTHER COLD WAR

by

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June, 2000

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STI COMMENTS ON CURRENT AFFAIRS

FACING UP TO ANOTHER COLD WAR

by
Clinton H. Whitehurst, Jr.

**The Strom Thurmond Institute of Government and Public Affairs
Clemson University, Clemson, South Carolina**

June 2000

For the second time in half a century the United States is engaged in a “cold war” with a powerful adversary—The People’s Republic of China. Knowledgeable individuals, both military and civilian, on both sides predict conflict is likely if China continues to press forward with its present policies, policies that have strained relations between the two countries in the past and ones that the PRC shows no signs of abandoning. Included is an aggressive foreign policy in Asia, an unnecessary military buildup of staggering proportions, the threat to take Taiwan by force if it does not agree to unite with the Mainland, and a continuous denial of human and political rights to its citizens. The response of the United States to these policies and other areas of contention has been ambiguous; sometimes recognizing the threat to U.S. national interests and reacting positively; sometimes denying that an obvious threat exists.

The question at the mid point of the year 2000 is whether a cold war does, in fact, exist and if so, why is it not recognized as such? The answer is not spelled out in black and white but in shades of gray. In this context, failure to acknowledge the existence of a cold war with the People’s Republic of China can be attributed to two main causes.

First, the Clinton administration would vigorously deny that any such conflict existed. It would argue that in the long run a policy of forbearance in the short term will eventually lead to a more democratic and less aggressive PRC. Thus, espionage, sales of sophisticated weapons to rogue states, threats against Taiwan, repression in Tibet, a major military buildup with no enemy in sight, and the threat to target American cities with nuclear weapons should America interfere in a Taiwan Strait conflict, are viewed as only rough spots and best ignored, as China travels the road toward becoming a benign and peaceful member of the community of nations. President Clinton has labeled this policy as “constructive engagement.”

A second, more obscure, but equally compelling reason is that the American public is not ready to accept the fact that we are again engaged in a cold war with another major and hostile military power. This trauma is not unlike that experienced by the British and French after the first World War. They paid a terribly high price in their victory and were unwilling to recognize Hitler’s Germany as a threat when all evidence pointed to the contrary. In essence, they were war weary and willing to rationalize any policy that would avoid another conflict. The parallel is plain enough. In

the 45 years following World War II the United States also paid a high price for its cold war victory over the Soviet Union in terms of its dead (Korea and Vietnam) and in national treasure expended.

Also important was the high psychological cost paid. The ever present threat of a nuclear holocaust, the Cuban missile crisis, surrogate wars in Africa, Central America and Afghanistan, and daily headlines pointing out areas of disagreement with the Soviet Union that could lead to conflict. All of this took its toll. Simply put, Americans by and large are not willing to so soon give up a peace won at so high a cost and embark on another cold war struggle.

A positive reaction to the PRC's threat to use force against Taiwan was the House passed "Taiwan Security Enhancement Act," legislation which would allow the United States to sell state of the art military technology and equipment to Taiwan. This was an essentially a Republican bill and was vigorously opposed by the Clinton administration. On the other hand, a Republican Congress granted permanent most favored nation status to China with respect to trade between the two countries. Such contradictions can only confuse public opinion and give comfort to those who deny reality and pursue peace at any price.

But if a cold war with the People's Republic of China exists as argued here, then the United States must recognize it as such and strive to prevail in the shortest time and at the least cost. And while another 45 year long cold war is not acceptable, it is quite reasonable to believe that China can be changed into the kind of country that the Clinton administration envisages and in a much shorter time frame. The paramount consideration is that the United States face reality. What if Britain and France had recognized the threat posed by Hitler in the run up to World War II and accepted the risk of positive action. One can only speculate but it seems fair to conclude that no matter what the outcome, it would have been a thousand times preferable to the known cost of six years of world conflict.

What can the United States do to end the cold war with the PRC quickly and on favorable terms, that is, the establishment of a democratic and non-threatening China. In this respect the United States must:

- Explain its position and rationale to potential allies and also be prepared to accept that many of its traditional friends will oppose a more confrontational policy toward China. e.g. the European Union.
- Counter PRC diplomatic efforts to secure actual and de facto mutual security agreements with neighbors with which it has fought border wars in the past—Russia, India, Vietnam. In other words use all the tools of diplomacy and persuasion to deny the PRC secure borders in its cold war struggle with the United States.
- Make clear its absolute determination to defend Taiwan against a military attack by the PRC, and further, initiate direct contacts between the Taiwan and U.S. military.
- Increase its military capabilities in the Western Pacific and, by definition, significantly increase overall military spending. While the cost will be initially high, it

will be more than offset by a democratic and non-threatening China down the road. A second, and not insignificant benefit, would a large reduction in military expenditures by nations in East Asia.

- Make a major, full press effort to bring Russia and Japan to an agreement over the Kurile Islands followed by mutual security and trade agreements.
- Make clear to China that every provision in the recently passed most favored nation trade agreement will be strictly enforced and that riders to the legislation monitoring certain aspects of Chinese behavior are as important as the legislation itself. And further, the first violation of the agreement by China will bring about swift and effective retaliation.
- Make clear that any threat, overt or covert, to America's East Asian allies and de facto allies—Japan, South Korea, the Philippines and Singapore—will be considered a threat to U.S. security.
- Write into law as necessary and strictly enforce prohibitions against the export of militarily useful technology/equipment to the PRC.

Implementing the above will be an exercise in “hard love” and will not be easily embraced by the American public. But it also should be noted that President Reagan's strategy for ending the cold war with the Soviet Union on American terms was not without its critics. Insuring that a totalitarian China does not dominate Asia, as Germany planned to dominate Europe, is not without risk. But then, what are leaders for?

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Taiwan's Role in WWII Forgotten

by

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Emeritus Professor of Management and Economics

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Taiwan's Role in WWII Forgotten

By Clinton Whitehurst

For several weeks in August, many nations will observe the end of the World War II in Asia. It will be celebrated as VJ Day or something else, depending upon who is doing the celebrating and whether historical accuracy or political correctness is the deciding criteria. Many will forget, however, that the war in Asia actually started many years before Pearl Harbour when Japan began a full-scale, no apology offered, invasion of the Republic of China.

During this 50th anniversary observance, Americans will remember Pearl Harbor, Corregidor, and the Bataan Death March. Britons will remember Burma and Singapore, and Australians jungle combat in New Guinea and the Battle of the Coral Sea.

Few, however, will remember the brutal battles that took place in China, or that a poorly equipped, if equipped at all, Republic of China army doggedly fought 1.2 million Japanese troops for almost a decade. Or that Chinese Communist militia then in rebellion against the central government, contributed little in the fight against the Japanese. Or that Chiang Kai Shek's government consistently refused Japanese overtures for a separate peace, a tantalizing offer that promised an end to Chinese suffering.

Most Americans accept that the atomic bombs dropped on Japan saved both Allied and Japanese lives by ending the war. But few will reflect on what the outcome in the Pacific might have been had the Republic of China surrendered, thus allowing Japan to throw an additional million men into the battles for Australia and India.

In 1949, four years after Japan's surrender, communist forces took control of mainland China and brought into being the People's Republic of China. The government of the Republic of China established itself on the island of Taiwan and, against all odds, survived. After the communist victory in 1949, American policy with respect to the Republic of China was a classic example of political duplicity — from an open embrace as a valued ally in the Korean War to renouncing its mutual security treaty with the ROC in 1979, and ultimately recognizing the Chinese communists as the legitimate rulers of China.

In 1995, the People's Republic of China remains a communist dictatorship, a confirmed aggressor, and a government with little or no respect for human dignity, but nonetheless a coveted market for Western products and investment. The Republic of China on Taiwan while a major military power in East Asia, a world economic power, and a democracy in the accepted Western tradition, is still an international outcast — not recognized by the United States, the United Nations or most of the world's countries.

Thus, while much debate can be expected as to what should the defeat of Japan be called — VJ Day or something not nation-specific — a more important question will probably be ignored. The question is, Will the contribution of the Republic of China in bringing about the defeat of Japan be recognized? Or will political correctness prevail and the People's Republic of China be designated representative for the anguish and suffering of the Chinese people during World War II and many years before?

Although most of the world's governments - pressured, threatened and cajoled by the People's Republic of China — will ignore the Republic of China's sacrifices in World War II, countless individuals, more honorable and perceptive than the governments that represent them, should not. Thousands upon thousands of American, British, Australian, Philippine, Korean, Malaysian, and Indonesian grandfathers fathers, children, and grandchildren are alive today only because the courageous Republic of China refused to give up when more than half of its country was occupied by the enemy and its casualties numbered in the hundreds of thousands.

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**AMERICAN MILITARY OPTIONS
IN A TAIWAN STRAIT CONFLICT**

by

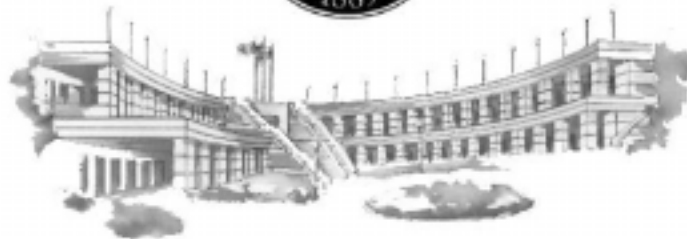
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ABSTRACT

United States-People's Republic of China relations since 1972 have varied from warm to frigid. Of most concern to U.S. policy makers and defense planners is the PRC's military buildup absent any real threat to her national interests in East Asia and her continued refusal to rule out the use of force to reunite Taiwan with the Mainland.

Under the Taiwan Relations Act, the United States is committed to insure that any reunification is by peaceful means. This paper examines several possible scenarios in which United States military force is used to back up America's commitment to Taiwan should the PRC decide on military force as the reunification option.

The paper hypothesizes that should conflict occur it will be between American-Taiwan forces, with limited Japanese support, on the one hand, and the People's Republic of China on the other. The task of insuring Taiwan's security will primarily fall on the U.S. Navy. The paper asks the questions of whether the Navy is prepared for a naval war in the Western Pacific. Does it have the right ships in the right numbers? The paper concludes that given the present downsizing of the Navy and the buildup of PRC naval forces, it is questionable whether the United States would prevail should conflict come in the early 21st century.

BIOGRAPHY

Professor Whitehurst received his Ph.D. in Economics from the University of Virginia in 1962 and completed post-doctoral work in Defense and Strategic Studies at Edinburgh University (Scotland) in 1970. While a Visiting Research Scholar in Taiwan (1988-89, 1991-92, 1997), he lectured at the Chinese Naval Academy, National Defense University, and the National Defense Management College. During World War II, Whitehurst served in the U.S. Merchant Marine. In the Korean War he served in the Merchant Marine and U.S. Army. In 1957 he received a commission in the U.S. Naval Reserve (Intelligence) where he served in the Ready Reserve until 1972. He is an Adjunct Scholar at the American Enterprise Institute, Washington, D.C. and a Senior Fellow (Transportation & Defense Studies) at the Strom Thurmond Institute of Government and Public Affairs, Clemson University. He is the author of five books and 145 other publications.

AMERICAN MILITARY OPTIONS IN A TAIWAN STRAIT CONFLICT

Absent the use of nuclear weapons, the outcome of a Taiwan Strait conflict will largely, if not entirely, depend on the capability of American naval forces in the Western Pacific. And if this is true, do we have the right ships, enough of the right ships, and doctrine to meet the challenge?

Two seemingly unrelated events affecting the national security of the United States occurred in the latter part of 1997. One was the inability of the United States to persuade the UN Security Council to specifically endorse the use of military force should Saddam Hussein continue to bar UN inspectors tasked with insuring the removal of Iraq's weapons of mass destruction. The second event was the October visit of Jiang Zemin, President of the People's Republic of China (PRC) to the United States. While several trade agreements were signed and declarations of future cooperation proclaimed, there was no perceptible movement toward settling the contentious and decades old Taiwan issue. Like his predecessors, Jiang refused to rule out the use of force to reunite Taiwan with mainland China. For its part, the United States insisted that reunification be accomplished by peaceful means.[1] In November 1997, mainland China's position on the Taiwan issue was reinforced when PRC premier, Li Peng, warned Japanese parliamentarians not to become involved in the Taiwan issue. Li Peng's concern was that a proposed revision of the present U.S.-Japan mutual security arrangements did not define geographic limits with respect to what constituted a threat to Japanese and United States national security.

If the use of force by the People's Republic of China to bring Taiwan under mainland control is an ever present possibility, and the United States remains committed to a peaceful resolution of the issue, then the question becomes—what action(s) can the United States take in support of the Republic of China should the PRC resort to force and the rest of the world chooses to play the role of interested bystander.[2]

Assuming diplomatic initiatives to resolve the issue are tried and fail, the American response will largely depend on (1) the military action taken by the PRC, (2) the actions taken by the Republic of China on Taiwan, and (3) the military capabilities of the United States and the PRC at the time. Assuming the ROC responds unequivocally to hostile PRC actions(s), the U.S. response will primarily be determined by considerations (1) and (3) as noted above, i.e., the military option(s) chosen by the PRC and military capabilities of the contending parties, including the capabilities of ROC military forces.

Time is also a factor, that is, the time at which a U.S.-PRC confrontation takes place. It becomes important since it is unlikely that American options in a 1999-2004 time frame will be the same as those in a 2004-2020 time frame given the modernization and continuing buildup of the PRC's armed forces, particularly its navy, and the continued downsizing of U.S. military forces in general. Absent the use of nuclear weapons, the outcome of a U.S.-PRC conflict will largely, if not entirely, depend upon the capability of American naval forces in the Western Pacific.

Scenarios, beginning at the lowest rung on the escalation ladder, are described and commented on. All scenarios assume diplomatic initiatives fail to end the threat. An imperative assumption with respect to blockade scenarios is that ROC commercial links with trading partners be maintained. If this can be accomplished, i.e., the blockade broken, then a successful outcome from a U.S.-ROC point of view, is a certainty. An appropriate analogy would be the success of the West, particularly the United States, in ending the Soviet Union's blockade of Berlin in 1949. On the other hand, if the blockade is successful, time will be on the side of the PRC. No invasion of Taiwan will be necessary. In due time, the PRC-ROC "dispute" will be relegated to the back pages of the media. And once that occurs, the Republic of China on Taiwan becomes a part of history.

Scenario #1 (1999-2004) The People's Republic of China threatens to halt ships calling at Taiwan ports without prior PRC clearance.

The Republic of China begins to convoy ROC-flag ships and offers protection to foreign flag merchant ships in Taiwan waters. European Union member nations and most East Asia countries, including Australia and New Zealand, accede to the PRC demand. Japan and the United States do not comply.

The likely U.S.-Japanese response would be to convoy or otherwise protect their ships in Taiwan waters. Initially, Japan's support would be limited to logistic support for engaged American naval forces. In a 1999-2004 time frame the United States and Japan have this capability. American carriers would be positioned east of Taiwan but could, at some risk, enter the Taiwan Strait.

The likely outcome of this scenario, assuming no American or Japanese naval or merchant ship losses, would be a diplomatic compromise, but one with Taiwan's security left in doubt. There would be no clear winner.

Scenario #2 (2004-2020) The People's Republic of China threatens to halt ships calling at Taiwan ports without prior PRC clearance.

Most nations accede to the PRC demand. Of the major nations, only the United States and Japan refuse to comply. In a 2004-2020 time frame, the PRC would have the capability of sustaining a submarine threat in the waters east of Taiwan. Its air force and ballistic missile force (DF15/M9 and DF-21) would be capable of inflicting losses on hostile naval forces in the Taiwan Strait, Yellow Sea and the northern South China Sea. American carriers would operate further to the east, outside the range of PRC cruise missiles.

The U.S.-Japanese response would be to protect their merchant ships entering and clearing Taiwan ports. Anti-submarine capability would be crucial as would the ability to escort shipping. Any United States deficiencies in this capability would quickly become apparent.[3] In addition to logistics support for engaged American naval forces, Japanese naval units would be called upon to perform anti-submarine and escort duties. Mine hunters and escort capable ships would be taken from other U.S. fleets and theaters of operation.

Should the confrontation become prolonged, PRC mining of waters around Taiwan could logically be expected. Mine hunting would be tasked to Republic of China naval units. At this point it is probable that U.S. mine hunters would be based at the Taiwan ports of Keelung, Kaohsiung, and

Hualien. An American option would be to mine major mainland China ports, but one that would be vigorously opposed and condemned in the United Nations.

The likely outcome of this scenario would be ship losses much like the losses that occurred in 1941 when U.S. naval units escorted UK bound convoys part way across the North Atlantic.[4] Convoy tactics would depend on the extent of PRC-claimed territorial waters around Taiwan, in particular waters to the east of the island. A reasonable assumption is that the PRC would claim a minimum of 200 miles eastward and would interfere or attack shipping within this zone. A favorable outcome for the United States would depend upon its ability to protect shipping within this zone. Assuming this ability, time would be on the side of the U.S. and Japan. In summary, the strategies and tactics that won the “Battle of the Atlantic” in World War II would be replayed in the Western Pacific. As in the case of the 1999-2004 scenario, the confrontation would likely end in a compromise, but one that guaranteed Taiwan’s security.

Scenario #3 (1999-2004) The People’s Republic of China announces an air and sea blockade of Taiwan, including mining of Taiwan waters.

Most nations accept the blockade and end commercial intercourse with the Republic of China. The United States and Japan are the exceptions. The United States begins convoy operations in cooperation with ROC naval units. Initial Japanese support is logistical in nature for engaged U.S. naval units. The ROC provides air cover for commercial ROC air carriers entering and leaving Taiwan. The PRC threatens Japan if U.S. air bases in Japan are used in air operations over Taiwan. The American response is to give the ROC Air Force sole responsibility for air cover operations but agrees to replace ROC planes losses. American carriers provide air cover for U.S., ROC and Japanese ships and planes entering and leaving Taiwan ports and airports. The carriers also become delivery vehicles for replacing ROC fighter aircraft losses.

Should the blockade be prolonged, Japanese naval units could be expected to provide escorts for commercial shipping moving between Japan and Taiwan. In a 1999-2004 time frame the United States, Japan and the Republic of China have the capability to break a PRC air and sea blockade. As in the case of previous scenarios, ships from other fleets would augment 7th fleet capabilities. To the extent that the 5th and 6th fleets are vital to American national security interests, then to that extent would transfer of units to the 7th fleet compromise those interests.

The likely outcome of this scenario would be a Korea-type cease fire. There would be no winner or loser. Taiwan would remain free but at a very high cost to its economy. The United States would realize it might not prevail should two major naval undertakings against hostile forces occur simultaneously.

Scenario #4 (2004-2020) The People’s Republic of China announces an air and sea blockade of Taiwan, including mining of Taiwan waters.

Most nations, including those that diplomatically recognize the Republic of China, accept the blockade and sever commercial links with Taiwan. U.S.-flag shipping companies withdraw their ships from Taiwan trade. The United States initiates convoy operations to resupply ROC equipment losses. Convoys are made up of Military Sealift Command owned and chartered ships. Ships are crewed by

volunteer civil service and commercial mariners. U.S. carrier groups are moved further to the east, acknowledging PRC capability to inflict ship losses with cruise missiles. Japan reaches accommodation with the People's Republic of China when Peking guarantees "freedom of the seas" with respect to sealanes considered vital to Japan's international trade. Peking agrees to UN oversight in this respect. Japan reaffirms its mutual security treaty with the United States but backs away from any involvement that does not threaten Japanese territory. Conflict, for all intent and purpose, becomes a naval war between the United States and the People's Republic of China. American merchant and escort ship losses continue. Replacing ROC fighter aircraft losses becomes increasingly difficult as carriers move further to the east. The United States accepts PRC's proposition of one country, two systems. East Asian nations no longer view the United States as a major power in the region.

Scenario #5 (1999-2004) The People's Republic of China launches invasion of Taiwan with air and seaborne troops.

In a 1999-2004 time frame this is not considered a likely scenario, primarily because the PRC's military buildup, particularly its navy, has not reached a point where it can openly challenge, that is, can win a regional naval war with the United States, the Republic of China and Japan.

Scenario #6 (2004-2020) The People's Republic of China launches invasion of Taiwan with air and seaborne troops.

The PRC threatens to retaliate against Japan, the Hawaiian Islands and Guam if the United States interferes. Nuclear weapons are not an option nor is it a option to fight an all out war with the PRC. Peking promises political and economic freedom to the Province of Taiwan at the conclusion of hostilities. The People's Republic of China points to the continued economic success of Hong Kong under PRC rule and the political stability of this "special area." The Joint Chiefs and the National Security Advisor to the President advise that the U.S. Navy cannot win a regional naval conflict in the Western Pacific against the People's Republic of China. UN pressures the United States to accept PRC promise of regional autonomy for Taiwan. Acceptance of these conditions ends America's presence as a major power in the Western Pacific.

QUESTIONS

With respect to conflict in the Taiwan Strait there are an infinite number of scenarios with an infinite number of outcomes. What can be said with respect to the above scenarios is that a successful outcome for the United States is almost entirely dependent upon its navy. This paper raises several questions regarding our naval capability in a 1999-2004 time frame and one from 2004 onward.

*Is the present and foreseeable 7th fleet capable of insuring favorable outcomes with respect to the above scenarios and time frames described? If necessary, can sufficient forces be committed to the Western Pacific without seriously degrading naval capabilities in other parts of the world, and in particular without degrading the capabilities of the 5th and 6th fleets?

*In the above scenarios, having the capability to keep open commercial ocean trade routes and to replace ROC losses is the key to a successful outcome for the United States and its allies. Can the United States win a World War II "Battle of the North Atlantic" in the Western Pacific in the 21st century? Is convoy doctrine studied and in place or has it been assigned to naval history books?

*Aside from insuring that naval budgets are sufficient to maintain capable naval strike forces in areas of the world important to American national interests, are the right type of ships available in sufficient numbers to win a naval war with the People's Republic of China? The Persian Gulf War taught us that having an anti-mine warfare capability is very important in certain types of conflicts.

Do the naval forces of Japan, the United States, and the Republic of China have sufficient numbers of anti-mine warfare ships and planes needed to successfully counter a PRC mine blockade of Taiwan?[5] Are there a sufficient number of escort ships to secure trade routes to and from Japan and Taiwan and the United States and Taiwan?

In the above scenarios, a major responsibility for anti-mine warfare was tasked to the Republic of China. Has the ROC committed sufficient resources to this threat? Under terms of the Taiwan Relations Act, the United States has the option of selling defensive weapons to Taiwan.[6] Anti-mine warfare ships and planes are in this category.

*Has the Republic of China made provision to replace its merchant ship losses remembering that its merchant fleet will be scattered around the world at the time hostilities begin and that many would be in near-China waters? Has it considered the outright purchase and maintenance of older merchant ships in the U.S. National Defense Reserve Fleet. e.g., Victory ships capable of 16-17 knots?

*Is a relatively expensive Arleigh Burke Class guided missile destroyer (DDG), for example, a cost effective vessel for escorting convoys the final 200-1000 miles into Taiwan ports?[7] Could a less expensive ship perform equally well when the primary threat to the ROC's sea lines of communication in the foreseeable future is the submarine?

Can a case be made for acquiring a new class of escort vessels such as the Coast Guard medium endurance cutter (WMEC)? In 1998, the cost of a state of the art, guided missile destroyer is almost \$900 million.[8] In contrast, in 1987 a Coast Guard WMEC cost approximately \$30 million.[9] And should this type of vessel not be entirely acceptable as an escort, could not our naval engineering expertise make the needed modifications—even doubling the cost of the build? Or design a new, low budget escort ship?[10]

*As the People's Republic of China navy increases its capability to operate in waters east of Taiwan, successfully defending entering and departing convoys will require committing major naval combatants. Assuming some ship losses and battle damage, has the United States the combatant/commercial ship repair capability on the West coast to meet this contingency?

CONCLUSION

It can be hoped that the present policy of political engagement with the People's Republic of China will eventually lead to a more benign and less threatening regime. And that economic reform will lead to political reform. But this is a hope only and is contradicted by the PRC's massive military buildup at a time when there are no enemies in sight.[11]

Should, however, a conflict with the People's Republic of China occur, it will be a naval war. With Subic Bay gone and the ever present risk that Japan will opt out as the PRC increases its military capability, particularly guided and ballistic missile capability, the question that can fairly be asked is whether the downsizing of the Navy is not a very high risk policy decision? Or put another way. If the PRC decides to forcibly reunite Taiwan with the mainland—when will the decision be made? The answer seems abundantly clear. When PRC naval forces can challenge the United States and win a naval war in the Western Pacific. What should be American policy? Again, a simple answer. Never allow the PRC the opportunity of mounting such a challenge.

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[1]*Taiwan Relations Act* (Public Law 96-8, April 10, 1979) Section 2(b)(3).

[2]It is accepted that should the People's Republic of China resort to force against the Republic of China, the UN would debate and possibly condemn the act. Not anticipated is that the Security Council, of which the PRC is a permanent member, would authorize the use of force against the PRC or agree to sanctions.

[3]The inventory of U.S. Navy anti-mine warfare ships includes 14 mine counter measure ships (MCM) and nine coastal mine hunters (MHC) with three more under construction. The Navy is also modifying a helicopter landing ship to that of a mine counter measures command, control and support vessel. It will provide a platform for mine counter measure Sea Dragon helicopters. Additionally, the Republic of China has seven mine sweepers and nine coastal mine hunters and has tentative plans to build ten 1500 ton corvettes.

[4]Prior to America's entry into World War II, it suffered ship losses in an undeclared war in the North Atlantic. In May 1941, the U.S. merchant ship, *Robin Moor*, was torpedoed as was the neutral Egyptian freighter *Zam Zam*. In October of 1941, the American destroyer, *Reuben James*, was sunk by a German U-boat.

[5]A recent U.S. General Accounting Report (*Navy Mine Warfare*, GAO/NSIAD 96-104) noted that while MCM ships were designed for mine counter measure operations worldwide, reliability and supportability of these ships remains a problem. With respect to MHC ships, these were designed to protect U.S. coastlines and not transit ocean distances. These ships can operate at sea for only five days and must be resupplied from shore facilities.

[6]*Taiwan Relations Act*. Section 2(b)(5).

[7]The opportunity cost doctrine is an economic concept. It states that the cost of the good chosen is the cost of the good or goods that alternatively could have been acquired. The tradeoff in this case is a very expensive guided missile destroyer for a larger number of less expensive escort vessels. At a time when navy responsibilities are increasing worldwide but at a time when naval budgets are being slashed, such tradeoffs deserves consideration when new naval construction is being debated.

[8]"United States Navy," *Jane's Fighting Ships 1998-99*, p. 787. In the FY 1998 defense budget, \$3,543.6 million was approved for 4 Arleigh Burke Class guided missile destroyers (DDG 89-92). Based on this figure, a single build would cost \$886 million.

[9]A medium endurance Coast Guard cutter (WMEC) with helicopter pad, 270 feet in length, displacing 1824 tons with a range of over 10,000 miles at reduced speed, had a shipyard value of \$30.1 million in 1986. "U.S. Shipyard Contracts," *Marine Log* (January 1987), p. 69. The last cutter of this class (*Mohawk* WMEC-913) was commissioned in 1991. No other builds are underway. A high side estimate for a similar ship in 1999 should not exceed \$100 million.

[10]The concept would be the corvettes used as escorts in the North Atlantic in World War II. In this paper the model is a Coast Guard WMEC cutter of the Famous Cutter Class. It is worth noting that in 1941 Winston Churchill called for building 100 corvettes. He referred to them as “cheap and nasties” (cheap to us, nasty to the U-boat). He went on to say “These ships, being built for a particular but urgent job, will no doubt be of little value to the Navy when the job is done—but let us get the job done.”

[11]Official People’s Republic of China figures put their 1995 military budget at \$7.5 billion. Outside estimates range up to \$140 billion and some authorities estimate an annual military budget of \$200 billion by the year 2000. Whatever the figure, few disagree that large annual increases in PRC defense budgets will continue into the indefinite future.

(References: The Heritage Foundation, *U.S. and Asia Statistical Handbook 1996* and The Heritage Foundation, *Restoring American Leadership: A U.S. Foreign and Defense Policy Blueprint* (1996).

**ALLIANCES, THE BALANCE OF POWER,
AND AMERICAN NATIONAL INTERESTS***

by

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ALLIANCES, THE BALANCE OF POWER, AND AMERICAN NATIONAL INTERESTS*

**By Professor Clinton H. Whitehurst, Jr.
1998**

It has been a good and successful partnership-but it's now time for the United States to leave NATO. The Cold War is over. There is now only one military and economic superpower-the United States, a nation with global interests. The security and economic viability of Western Europe is one of those interests-but only one.

The 1995 debate over sending a large American force into Bosnia-Herzegovina (as part of a NATO peacekeeping force) has come and gone, yet the question of what role NATO should play in the affairs of Europe, and what role the United States should play in NATO, is far from settled. If anything, the issue is more obscure than ever.(1)

While granting that 20,000 U.S. troops were deployed to Bosnia in an expeditious manner and that five months into their planned year long stay, American casualties have been minimal, this exercise in the use of military force has still not convinced a majority of Americans that United States involvement was necessary and that the \$2 billion plus cost of the deployment was a prudent use of taxpayer dollars.

Stripped of all subtleties, the question for most Americans is: How did the United States get involved in what is perceived as an essentially European conflict, one not contemplated or planned for when the North Atlantic Treaty Organization was created in 1949? The follow-on questions, however, are even more important. Is the Bosnia deployment a precedent for future commitments of American military power? Is it in the best interest of the United States to be tightly bound to a regional alliance, howbeit a very powerful one, in a world where America's national interests are global and generally changing? In a world where balance of power diplomacy is probably the best alternative to the United States becoming the world's policeman?

NATO

By 1949, the United States and the countries of Western Europe realized that rebuilding Europe economically would not in itself be sufficient to deter Soviet expansion westward. Thus was born a military alliance, the North Atlantic Treaty Organization, whose chief purpose was to deter a Soviet attack on Western Europe. The operative clause in the agreement was that an attack on one member was an attack on all. On April 4, 1949, 12 nations signed on: Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom, and the United States. France formally withdrew from the alliance in 1965; Greece and Turkey were added in 1952, West Germany in 1954 and Spain in 1982.(2) American steadfastness to the alliance concept, together with its nuclear arsenal, kept the peace in Europe until the breakup of the Soviet Union in 1991.

With the end of the Soviet threat, NATO became an organization in search of a mission. If NATO was to continue, its mission had to be redefined. But redefined to do what? To prevent what? The American interest in keeping NATO was straightforward-to maintain a major presence in Europe at a time when the 12 nation European Community was increasingly taking positions at odds with American political and economic objectives.

The European view of the role of the United States in Europe (and the world) was that as long as the United States continued to proclaim it was the only remaining military and economic superpower, then let it act out the part, a view which quickly led to the perception that unless the United States acted (in one crisis or another) nothing would happen. This, of course, begs the question of what should happen .

BOSNIA-HERZEGOVINA

Bosnia-Herzegovina is a newly created country that was once part of the former Yugoslavia. Between 1993-95, its two main ethnic groups-Serbs and Muslims-fought a bitter and ruthless civil war, a war which spilled over into neighboring Croatia, and one that could easily involve several other countries.(3)

The conflict, however, went far beyond the accepted bounds of warfare. Serb forces were accused of atrocities that rivaled those of Hitler's Germany. And as more atrocities were documented, scores of Serb leaders were indicted for war crimes by an international tribunal. Casualties on all sides, both civilian and military, numbered in the hundreds of thousands. And like the Viet Nam War of a generation ago, it was a conflict where the suffering (in color) was there for all to see on worldwide television. The word from Western capitals was-the conflict must end.(4)

Into this boiling pool of hate and rage stepped the United Nations, the world agency charged with promoting peace, and the North Atlantic Treaty Organization, the world's strongest military alliance. While world opinion expected and supported UN efforts to mediate the conflict, the role of NATO and the United States as NATO's leader, was contentious from the beginning.

The first two and one half years of fighting was heavily in favor of the Bosnian Serbs. Over half of Bosnia-Herzegovina was controlled by Serb forces as well as parts of Croatia. In the latter half of 1995, however, the war turned against the Serbs with the result that diplomats saw an opportunity for a negotiated peace. The agreement that was reached called for a NATO ground force of 60,000 troops to act as peacekeepers. President Clinton pledged that 20,000 heavily armed American combat units would be part of this contingent, and in December of 1995 delivered on that commitment.

BEYOND BOSNIA

The immediate question is: Can the United States continue to guarantee the security of Western Europe, which is in its own interest, but not become involved in local European conflicts?

A United States role in a redefined NATO has not been without proposed options and attendant rationalizations. One widely discussed option is for the United States to remain in NATO, but with a clear understanding of when American forces will and will not be used. The option anticipates U.S. forces remaining in Europe with NATO forces under an American commander as in the present case.(5)

A second option, and the one suggested in this paper, is for the United States to withdraw from NATO after giving the required one year notice. During the one year grace period, NATO's European members would form a NATO-like military alliance, one with which the United States would conclude a mutual security pact. Canada and Iceland, and perhaps Turkey, might opt to reach mutual security arrangements with the United States on a bilateral basis. It would be their choice to make.

There are a number of advantages to such an arrangement.

- A continuing guarantee by the United States to come to Western Europe's assistance should an outside threat to its security arise;
- Expanding membership in a European security organization, minus the United States, would be viewed by Russia as less threatening to its territorial integrity;
- More freedom of action for the United States to negotiate mutual security agreements with non-Western European nations, including Russia;
- Providing humanitarian assistance when called upon would be politically much easier when there was little possibility of being involved in local conflicts, not only in Europe but worldwide; and
- Development of a model for guaranteeing the security of regional groups of friendly countries without the risk of becoming the world's policeman.

Of the advantages cited should the United States formally withdraw from NATO, the one with the most far reaching global implications is greater American flexibility to conclude mutually beneficial security arrangements with other nations, particularly to enter into balance of power arrangements.

BEYOND EUROPE: THE BALANCE OF POWER CONCEPT

Briefly stated, the United States simply does not have the capability (within foreseeable defense budgets) to maintain a 100,000 man presence in every area of the world where it has paramount national interests.(6) And even should it be willing to make such a commitment, the presence of American forces in friendly countries is always contentious and will likely become more so.(7)

If large scale deployment of U.S. forces is ruled out-what strategies exist to insure American interests worldwide are not only given due consideration, but also backed up by military force?

The balance of power concept implies the existence of at least three players (nations or alliances) of approximately equal military strength. There must be actual or potential conflict (competitive) situations wherein the nations or alliances have conflicting objectives, long or short term, that is, objectives that are contrary to the national interest(s) of the other players. The nation or alliance exercising the balance of power achieves its ends by diplomatically and/or militarily supporting the weaker of the two remaining players in a conflict situation. Its weight, together with that of the weaker player, is sufficient to deter the strong player from any course of action inimical to the balance of power nation. The last requirement in the practice of balance of power politics is a nation's willingness to change sides as the situation dictates. As it has been said before-"nations do not have perpetual allies, but only perpetual interests." The classic example of the successful application of the balance of power concept was that of Great Britain in the 19th century. British policy was to insure that there was no dominant power on the European continent. The policy was, by and large, a success. The result of the policy became generally known as Pax Britannica.

In the early years of the Cold War (1947-91), the People's Republic of China (PRC) was allied with the Soviet Union and its East European allies. It was logical, if not mandatory. Both the PRC and the Soviet Union actively supported North Korea in the Korean War. Moreover, in the early 1950s the nuclear power

advantage lay with the United States. Having the PRC in its corner mandated that the United States divide its attention and resources between Asia and Western Europe. In the 1970s the PRC was courted by the United States to offset an imbalance of conventional forces in Europe. In both cases, while the PRC was the weaker third party, at a given point in time its military capability tended to even out the balance of power between the two major alliances-NATO and the Warsaw Pact.

In 1996, there are three, stand alone, first rank military powers in the world-the United States, Russia and the People's Republic of China. The PRC can no longer be considered the weaker of the three nations. Each has the capability to inflict unacceptable damage on the other by use of intercontinental ballistic missiles carrying atomic or chemical/biological warheads.(8)

In Europe, the trend is toward a rough military balance between Western European nations on one side and Russia on the other. Both sides have adequate or more than adequate atomic arsenals. And although Russia still has a significant preponderance of nuclear and conventional forces when contrasted with Western Europe, the loss of its Eastern European allies as jumping off points for a surprise attack on the West, makes such an attack highly problematic. In short, a strictly West European alliance has the potential to stand toe to toe with Russia should a major dispute between the two sides ever arise.(9) And with the United States as a third party guarantor of Western European security, the likelihood of such a dispute developing into a conflict situation is quite remote.

AMERICAN INTERESTS IN EAST ASIA

If it is granted that a rough balance of power can exist in Europe without the presence of 100,000+ American troops, can the same be said in East Asia?

First, who are the players, that is, the major powers with national interests in the region? By any definition, they are the People's Republic of China, Russia, Japan and the United States. In terms of economic strength, the United States and Japan are in a class of their own. In terms of military power, absent nuclear weapons, it is another matter. The People's Republic of China stands alone.

The second question is: what are the intentions of the PRC? And equally important-have its long term goals, and methods of achieving these goals, changed over time. Is there a consistent pattern? If a track record means anything, the answer is an emphatic "yes." The PRC was, and still is, the bully of East Asia, not unlike Hitler's Germany of the mid and late 1930s. Witness its provoked border wars with India, Vietnam, and the former Soviet Union. Its entry in the Korean War on the side of North Korea, an aggressor nation by any standard. The ruthless suppression of Tibet, the PRC's unilateral claims to the Spratley Islands, the Tiananmen Square massacre, and its overall human rights record. Add to this the death and destruction as a result of Communist Party policies in the 1950s and 1960s-The Great Leap Forward, the Cultural Revolution, the Hundred Flowers Campaign, and the well documented atrocities of the Red Guards. No less an apologist for PRC actions than former President Richard Nixon estimated the slaughter to be in the millions.(10) Other sources put the figure in the tens of millions.

In 1996, the government is the same, only the rulers are different. Rulers which authorized one of the world's largest nuclear tests in 1993 and had no hesitation in attempting to intimidate the Republic of China on Taiwan by massive military exercises in the Taiwan Strait in March of 1996. Those driving PRC policy in 1996 are the hard liners in the Communist Party and the country's military leadership. Neither group is an advocate of peaceful co-existence with its East Asia neighbors or a willingness to arbitrate disputes. In 1996, there is no way the United States and its nominal allies in East Asia can match PRC conventional land forces. And not to be neglected is the PRC drive to create a blue water navy.

Given the above, what option does the United States have to insure its national interests in the region? Two are feasible. The first is to encourage Japan to rebuild its military-not in incremental stages as is now the case, but a declared buildup of the first order. However, given the assured hostile reaction to such a buildup, not only by the PRC but most of the nations in East Asia, together with a significant domestic opposition, such an option coming to fruition is no better than a ten to one wager.

The second option is a mutual security treaty between Russia, Japan and the United States. The salient portion of such an agreement would be a guarantee of the political and territorial integrity of the nations of East Asia. Plain and simple it is a balance of power option but one that would be "dead on arrival" if the United States remains NATO's leader.

What are the odds for this option coming about? Long indeed until Japan and Russia settle the Kuril Islands dispute.(11) Unless the American State Department is conducting a deep cover diplomatic operation, the Kuril Islands issue is being treated with a benign neglect. Initial hostility to a tripartite Japan, Russia, United States agreement could also be expected from Western European nations, a hostility, however, that could be overcome by a firm and unequivocal American commitment to its achievement.

Given a Kuril Islands settlement Japan's benefit from a mutual security pact is self evident. Two benefits are important. First, the passion surrounding the issue of accelerating a military buildup would be dampened. Second, its security would not be tied to a single military superpower-but rather two. A secondary benefit would be a friendlier climate for Japanese investment in Russia East Asia.

What benefit would Russia derive from such a pact? The major, and perhaps only benefit, would be a guarantee of its Asian (Russia East Asia) territorial integrity. It is of only passing interest that Russia is selling high tech weapons to the PRC, financing nuclear reactors, and exchanging high level visits between heads of state. At best, such actions provide for only a short term détente. In the not so long run, Russia must come to grips with the reality that Russia East Asia is a prize within reach of the People's Republic of China. The growing population of China (and where to put them), even with its rigid birth control policies, will be a major problem for PRC leaders in the early part of the 21st century. In 1996, there are no more than three million Russians on its side of the present border. They face upward of 150 million Chinese living in northern China. Equally important is the fact that Siberia is a veritable "treasure house" of natural resources; resources that the PRC would be more than willing to risk a conflict to obtain.

CONCLUSION

The United States cannot and should not be responsible for keeping world order. However, that it remain a major player in world events goes without saying. One approach is to maintain a military capability that would be superior to any likely combination of challengers, together with a willingness to use such a force when necessary. While such an option has its appeal, the cost in dollars makes it prohibitive. And not to mention the opposition of a large and vocal segment of the American electorate. The second option is to exercise American influence by entering into regional security agreements, such as those proposed for Europe and East Asia. Others could be negotiated as circumstances warranted.

NOTES

1. Almost from the beginning NATO's mission in Bosnia was controversial. Human rights groups wanted NATO military forces to assist in investigating alleged war crimes. The original mission statement precluded such activity but was later expanded to include this type of assistance. However, NATO forces are not tasked with seeking out and/or "arresting" alleged war criminals. Discussions have also taken place with respect to extending the present one year limit for keeping NATO (U.S.) forces in Bosnia.
2. France is a major contributor to the 60,000 man international peacekeeping force in Bosnia-Herzegovina. While France is not technically a member of NATO, its foreign policy historically has generally supported NATO objectives. Militarily there is also close cooperation between France and NATO.
3. In the first two years of the conflict, Serbia actively supported the Bosnia Serbs. In 1995, Iran was identified as a nation providing military training and supplies to Bosnian Muslim forces.
4. Several Croat and Muslim military commanders have also been indicted for war crimes. By far, however, the great majority of atrocities (war crimes) are attributed to Bosnia-Serb military and para-military forces.
5. A February 7, 1996 Heritage Foundation publication "Getting NATO Back to Basics," cited three guidelines to achieve this goal

(1) America's principal military role would be to serve NATO's core mission-to protect NATO member states from a major power threat.

(2) The United States would make a unique contribution to any military operation-not duplicate the capabilities of European NATO members.

(3) the United States forces contribution would be decisive (in terms of numbers of American combat forces) with respect to the core mission of the alliance.

One argument of those favoring a continued 100,000 man U.S. military presence in Europe (NATO) cite the possibility that a hard line Russian government at some time in the future might attempt to bring eastern European nations back into its sphere of influence, peaceably or otherwise.

As a possibility this cannot be denied. The question, however, is "how long" must the United States commit its forces in Europe in anticipation of a possible Russian aggressive move against Western Europe? Till the year 2000, 2025, 2050 . . .? As argued in this paper, the greatest threat to Russian territorial integrity is not in Europe but Asia. Accepting this, it is hardly likely that Russia would confront the West in Europe and thus "invite" the People's Republic of China to annex large chunks of Russian Asia.

6. The United States has approximately 30,000+ military personnel in South Korea and some 47,000 in Japan.
7. Vehement protests by local citizens arising from the rape of an Okinawa girl by three U.S. servicemen in 1995 is a case in point. The protests and subsequent trial of the defendants received worldwide publicity.
8. Whether People's Republic of China missiles have the range and accuracy to hit U.S. West coast targets is an open question. What is not in dispute is that such a capability is inevitable.
9. In evaluating the strengths and weaknesses of a stand-alone West European military alliance vs. Russia, the economic strength of Western Europe is a high card indeed, i.e., Western Europe's ability to make large investments in Russia and to influence international credits and guarantees to Russia, e.g., the World Bank.

10. See Richard Nixon's *In the Arena* (p. 329) and *The Real War* (pp. 134 and 142).

11. The dispute is over the Kuril Islands (four islands located north of Hokkaido, one of Japan's home islands) which were occupied by the Soviet Union at the end of World War II. The total disputed area is less than 2,000 square miles. Unfortunately, territory is a secondary consideration when contrasted with national pride and prestige.

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Clinton H. Whitehurst, Jr., received his B.Sc. in International Affairs and M.A. in Economics from the Florida State University in 1957 and 1958 respectively. His Ph. D. was from the University of Virginia in 1962. Post doctoral study (1970) was in Defense and Strategic Studies at Edinburgh University (Scotland). In 1972 he received a certificate in National Security Management from the Industrial College of the Armed Forces and in 1976 was awarded the U. S. General Accounting Office's Certificate of Merit for "Identifying and reporting very serious shortcomings in the sealift readiness posture of the United States." In 1981, he was a member of the Reagan administration's Federal Maritime Commission transition team. And in 1991 received the National Defense Transportation Association's Educators Distinguished Service Award.

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SPECIAL REPORT

LAST CLEAR CHANCE FOR AN ENDURING MARITIME POLICY

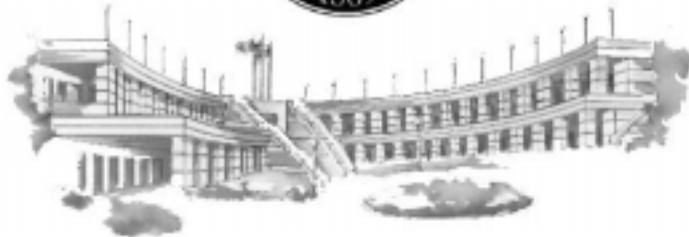
By

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1998

**Emeritus Professor of Management and Economics
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The Last Clear Chance For An Enduring Maritime Policy

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LAST CLEAR CHANCE FOR AN ENDURING MARITIME POLICY*

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1998

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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 defense 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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Journal of Commerce. The Journal of Commerce, one of America's oldest continuing newspapers, is published five days a week in New York. Issues covering calendar years 1994 and 1995 have been valuable reference sources. Its "Air Commerce" supplement was particularly helpful.

South Carolina Academy of Science. A primary reference source (refresher source) are papers by the author read at annual meetings of the South Carolina Academy of Science. Papers include "Airline Globalization, 1989, 1990, 1993, 1994, and 1995" and United States and International Ocean Shipping, 1994 and 1995.

Seafarers Log (Official Organ of the Seafarers International Union). Issues covering calendar years 1994 and 1995 were excellent reference sources on maritime issues being debated in Congress.

Marine Log. This monthly publication is a timely and authoritative source of maritime industry data. Issues for calendar years 1993, 1994 and 1995 were particularly valuable.

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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.

SPECIAL REPORT

THE FORGOTTEN CONCEPTS OF SOVEREIGNTY, INDEPENDENCE AND NATIONHOOD AS CRITERIA FOR UN MEMBERSHIP

by

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**Clemson University,
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July 1998

**THE
STROM THURMOND
INSTITUTE**



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The views presented here are not necessarily those of the Strom Thurmond Institute of Government and Public Affairs or of Clemson University. The Institute sponsors research and public service programs to enhance civic awareness of public policy issues and improve the quality of national, state, and local government. The Institute, a Public Service Activity (PSA) of Clemson University, is a nonprofit, nonpartisan, tax-exempt public policy research organization.

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THE FORGOTTEN CONCEPTS OF SOVEREIGNTY, INDEPENDENCE AND NATIONHOOD AS CRITERIA FOR UN MEMBERSHIP

A benevolent ruler from some far galaxy conquers earth and is predisposed toward allowing a self governing planet. But before granting self rule he/she examines the management, practices, and procedures of the United Nations.....

Definitions

sovereign (n)

(4) independent of all others, as, a sovereign state

independent (adj)

2(a) not depending upon another for financial support

nation (n)

(1) a stable, historically developed community of people with a territory, economic life, distinctive culture and a language in common

Webster's New Universal Unabridged Dictionary, 1979

The United Nations

As of October 1997 there were 185 member states of the United Nations. At its beginning in 1945 there were 51 original members. (1)

The Charter of the United Nations states the “the organization is based on the *sovereign* (italics supplied) equality of all Members,” and that “Membership in the United Nations is open to all peace-loving states which accept the obligations contained in the present charter and in the judgement of the Organization are *able* (italics supplied) and willing to carry out these obligations.” Membership is recommended by the Security Council and passed on by the General Assembly. (2)

Tempting as it might be to examine the “peace-loving” requirement for membership in the UN and the conditions (Chapter II, Article 6) under which a nation may be expelled, this monograph will primarily consider the implied requirements of economic viability and internal stability of an applicant state as a pre-condition for membership.

Although the UN Charter avoids setting specific economic and internal stability criteria as a condition of membership. e.g., a specified per capita GDP or specific form of government, never intended was that a territory (nation) admitted to the UN, could as a matter of right, expect the UN to guarantee its internal stability and/or subsidize its economy in perpetuity. Argued here is that the majority of countries that were admitted to the UN after 31 December 1945 were not economically viable and that a lesser number lacked internal stability. (3) If this proposition is tentatively granted, the question becomes—Why were geographic areas that could not meet the definitional test of a sovereign, independent nation, admitted to the UN as fully participating member states?

Rationale For UN Membership in the Post World War II Period

In the haste to end colonial rule after World War II, “freedom,” “independence,” (as in the 4th of July), and “self-determination,” became the operative words and phrases. Little, if any, attention was paid to economic viability/ sustainability and internal stability when considering an application for UN membership, and in so doing, ignored a primary function of the UN International Trusteeship System. (4)

A second and more pragmatic reason for the explosive growth in UN membership was that once admitted each nation had one vote and only one vote in the General Assembly.(5) Thus was it logical for those nations that could not meet the test of sovereign nationhood, but were UN members, to enhance their influence in the General Assembly by supporting the applications of potential allies. As the UN’s agenda became more contentious and divisive in the 1970s and ’eighties, voting in the General Assembly was determined as much by economic and regional considerations (rich vs. poor and northern vs. southern hemisphere nations) as by the geopolitics of the Cold War.

Of the 51 original members of the UN, admitted prior to 31 December 1945, six had a 1997 per capita GDP of \$2500 or less (11.7%). Of the 134 nations admitted after 1945, sixty (44.7%) had a 1997 per capita GDP of \$2500 or less and of these 60, twenty seven had per capita GDPs of \$1000 or less in 1997.

With respect to being able to carry out their obligations to the UN, one of which is financial support, of the 60 relatively poor nations cited above, all but five are assessed .01 percent of the UN annual budget. Thus, 55 nations, approximately 30 percent of all UN members, are responsible for only .55 percent of UN operating costs, the greater part being a redistribution of wealth as between nations and maintaining political stability in member states. (6) Appendix A provides detailed information on the economic data cited.

In the 1990s, the “richness” of the English language was again demonstrated when appellations such as rich and poor nations was replaced by “developing,” “transitional,” and “advanced” nations. (7)

Political Stability

Chapter I, Article 2(7) of the UN Charter states:

Nothing contained in the present Charter authorizes the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter—

A plain English reading of this article would imply that maintaining internal stability within a country is a matter left to the government of that country. Be that as it may, the UN has intervened on a number of occasions to insure internal stability in a member country. The most recent instances are: Somalia (admitted to the UN 1960), Bosnia and Herzegovina (admitted to UN 1992), Rwanda (admitted to UN 1962), and Haiti (admitted to UN 1945). (8)

In 1997 the UN was engaged in 16 peacekeeping operations at a cost of over \$3 billion annually. (9) It is worth noting that none of these UN operations were in UN ‘trust territories’ but rather in the territory of sovereign UN member states. One interpretation of the above might suggest that UN intervention in a peacekeeping role is a major factor in maintaining world peace and security. This is questionable at best. The fact is that the UN has been a marginal player in situations that count. (10)

The UN General Assembly

The General Assembly is one of the principal organs of the United Nations, the others being the Security Council, the International Court of Justice, the Trusteeship Council and the Secretariat. Of the five, the General Assembly is the only organ where all nations are theoretically equal, i.e., each has one vote.

This paper has argued that most nations admitted since 31 December 1945, would not qualify as sovereign, independent nations under a more exacting standard for membership. But why is this important? What authority does the General Assembly have that can be exercised to the detriment of the United States and, for that matter, other developed nations? In this regard:

1. Membership in the United Nations is recommended by the Security Council but also requires a two-thirds vote in the General Assembly.
2. Assessment of dues is determined by the General Assembly. Likewise, any change in a country’s assessment requires a majority of the 185 member General Assembly. Appendix B summarizes and analyzes the UN budget.

3. Member nations may be expelled by the General Assembly upon recommendation of the Security Council.
4. The General Assembly may meet in emergency session when it feels a threat exists to international peace and security. It is essentially a judgment call on the part of the Secretary General.

In addition to the above, the General Assembly may make recommendations on just about any subject brought before it. (11) While such recommendations are for the most part non-binding, they can influence world opinion on almost any issue, with or without merit.

Many attempts have been made to make the UN a more efficient and responsive organization. The United States, in particular, has been a constant critic and has used monies owed to the UN as leverage for change. (12)

Changes to make the UN more economically efficient and responsive, however, is only a marginal concern of this paper. The major concern is the present lax, or non-existent, requirements for UN membership.

UN Membership: Expanding Without End?

The possibility of an infinitely expanding UN membership might be called a gross exaggeration. After all, UN membership increased only 3 1/2 times since 1945 (51 to 185). But a growing membership with no end in sight is not only possible but quite plausible. Consider the following territories which, in 1998, are actively seeking independence from a central authority. And should they succeed would certainly apply for UN membership.

Territory	Present Governing Authority
Chechnya (13)	Russian Federation
Kosovo	Serbia
Palestine	Israel
East Timor	Indonesia
Kurd territories	Iraq and Turkey
Basque territory	Spain

Other geographic areas where a significant part of the population favors independence or where independence is a possible solution to long standing disputes.

Quebec	Canada
Puerto Rico	United States
Cyprus	Greece and Turkey
Kashmir	India
Taiwan	Republic of China and People's Republic of China
Tibet	People's Republic of China
Tamil territory	Sri Lanka

Countries where partition might be the only solution to civil war. Precedents include North-South Vietnam, North-South Korea, North-South Yemen.

These countries are:

- Northern Ireland
- Rwanda
- Sudan
- Democratic Republic of Congo (Zaire)
- Liberia
- Bosnia and Herzegovina
- Somalia (14)
- St. Kitts—Nevis (St. Kitts pop. 35,000; Nevis 10,000)

The above is hardly an exhaustive list of possibilities. With several exceptions, most of the above are bitterly poor. Nor do population projections offer any great amount of hope for increased standards of living in existing as well as potential developing countries.

World Population Estimates (Thousands) (15)

Area	1984	2000	2025
World	4,763,004	6,127,117	8,117,052
Developed Regions	1,165,611	1,275,655	1,396,673
Less Developed Regions	3,597,393	4,851,462	6,780,379

A politically popular comment in present day United States is “To end welfare as we know it.” This paper argues that the concept be extended to nations as well as individuals. Not suggested, however, is an end to the transfer of wealth as between developed and developing nations. When voluntary transfers are made, by definition, there are gains for both sides. Such transactions fit comfortably into the classic economic “gains from trade” model. Objections arise when wealth transfers are determined by a one nation, one vote system.

Lord Thomas Babington Macaulay best made the point when he said:

The day will come, when in the State of New York a multitude of people, none of whom have had more than half a breakfast, or expect to have more than half a dinner, will choose a legislature. Is it possible to doubt what sort of legislature will be chosen? On one side is a statesman preaching patience, respect for vested rights, and strict observance of public faith. On the other is a demagogue ranting about the tyranny of capitalists and usurers, and asking why anybody should be permitted to drink champagne and to ride in a carriage. Which of the two candidates is likely to be preferred by the working man? (16)

Lord Macaulay has proved to be a prophet in his own time. In 1997, most third world countries voted to significantly cut their own assessment and to increase the United States share to 31 percent of the UN budget. And in July 1998, the UN General Assembly voted overwhelmingly to grant the Palestinian UN delegation about the same rights as those of independent states, a resolution vigorously opposed by the United States.

Appendix C discusses unilateral and voluntary transfers of wealth as between nations.

Under the present criteria, or lack thereof, for UN membership, a showdown between rich and poor (developed and developing) nations in the General Assembly is inevitable. Proponents of the present voting system in the General Assembly could be expected to strenuously deny such a possibility and point out that the Security Council, in which permanent members have a veto, effectively limits the power of the General Assembly. But before accepting that argument at face value, consider the following scenarios.

The Security Council’s permanent members are expanded to include two representatives from Africa, two from South America and one each from India, Germany and Japan. (Note that an expanded Security Council has been under discussion for over a decade) Now assume the newly constituted Security Council votes to abolish its veto power. Such a vote would be actively supported by a variety of interest groups in the *developed* countries that historically have favored one man, one vote in all things, and would argue that global interests must prevail over national interests.

Should a veto proof Security Council emerge, a likely outcome is a Security Council divided between economically (not militarily) have and have not nations with the “have nots” in the majority.

A less likely scenario is that a majority of an expanded Security Council votes to abolish itself leaving world governance in the hands of the General Assembly. In either scenario, a breakup of the UN is inevitable.

While it is probably too late to unscramble the egg, i.e., revoke UN membership of an existing member, it is not too late to discipline the present one country, one vote system in the General Assembly. In this respect, two recommendations are made:

1. Membership in the UN be made contingent upon the applicant state demonstrating long run economic viability and political stability for a defined period of time prior to membership. During the waiting period, the applicant state could be granted observer status at the UN. (17)
2. The number of votes assigned to a nation in the General Assembly would coincide with the nation's contribution to the UN budget and its population. No longer would a country of 50,000 population, with an assessed .01 percent of the UN budget, have the same number of votes as a nation of 100 million with an assessment of 5.0 percent or more. (18)

Conclusion

Over the years the United States has suggested and argued for many changes in how the UN is operated and managed. At different times and on different issues it has been supported by one or more developed nations. The umbrella U.S. complaint is that the UN is mismanaged and wasteful in the extreme. A long standing American recommendation is to reduce the number of organizations and agencies reporting to the General Assembly, which in turn would reduce the 48,000+ UN payroll.

A minority in the U.S. Congress favor a U.S. withdrawal from the United Nations. Many more insist on a significant reduction in the present U.S. assessment of 25 percent of the UN budget. The difficulty, however, of achieving any serious reform measures was noted by Secretary of State Madeleine Albright. In an address to the North Carolina Community Foundation on 4 March 1996, she said:

I have often compared the {UN} to a business with 185 members of the board; each with a different culture; each with a different philosophy of management; each with unshakable confidence in his or her opinions; and each with a brother-in-law who is unemployed. (19)

While both of America's major political parties favor major UN reforms, no recommendation with respect to qualifications for UN membership has ever been put forth. An infinitely expanding UN membership is a problem that must be addressed and one that can be addressed by the United States acting unilaterally.

Under the present UN charter the Security Council recommends membership in the UN which is then voted on by the General Assembly where a two-thirds majority in favor of membership is required. It is at the Security Council that the United States could insist that applicants for UN membership demonstrate that they are, in fact, sovereign, economically viable, and political stable entities. The threat of an American veto would go a long way toward insuring that membership requirements, or lack thereof, are fully debated.

Should, however, the United States implement such a strategy, world outcry would be loud and strenuous. Words and slogans such as the inalienable right of any population in a defined geographic area to be "free, independent and sovereign" would echo in a thousand places and forums. Consider a worst case scenario from the American point of view. After a prolonged and bitter struggle, Kosovo achieves independence from Serbia and asks for admission to the United Nation. The United States then would have essentially two choices. One. Veto the application and accept world condemnation. Two. Acquiesce and face unlimited "Kosovo applications" in the 21st century.

NOTES

(1) "The United Nations at a Glance," *United Nations Association of the United States of America, 1997*.

(2) *Charter of the United Nations*, Chapter I (Purposes and Principles) Article 2(1). Chapter II (Membership) Articles 4(1) and 4(2).

(3) Economic viability is minimally defined as {a nation} having a gross domestic product capable of insuring a subsistence level of diet, shelter and medical care for its population and a GDP growth sufficient to provide the above for an increased population as the case may be.

Internal stability implies maintenance through government of a stable social/political structure within a territory or country. The opposite definition is one of anarchy which implies a social structure without government or law and order.

(4) Chapters VII and VIII of the UN Charter established a Trusteeship System and Council to oversee the well being of territories that would not otherwise be admitted to the UN as member states. Various member states (e.g. the United States) administered trust territories under these provisions in the Charter. Initially there were 11 trust territories administered by the UN. In 1994, the last trust territory, Palau, was granted independence and became a UN member. The Trusteeship Council suspended operation in November of 1994.

(5) Each member state may send up to five delegates, five alternates and unlimited advisors to the General Assembly. Each member state, however, has only one vote.

(6) Eighty three countries admitted to UN membership after 31 December 1945 are assessed a minimum .01 percent of the UN budget.

(7) The International Monetary Fund categorizes countries as (a) advanced (28), (b) developing (127), (c) transitional (28), and (d) no category (2) [International Monetary Fund, *World Economic Outlook, May 1998*]

(8) There is a fine line between maintaining internal stability (peacekeeping) and taking sides in a civil war. In the past, the United States has acted unilaterally and taken sides in a number of civil wars. Justification was on humanitarian and national interest grounds. UN involvement in what are essentially civil wars is on humanitarian grounds.

(9) Over 20,000 UN troops, so-called “blue helmets,” were involved in peace-keeping operations in 1997. [*1998 Collier’s Yearbook*, p. 456.]

(10) It has been argued that the UN is a major player in maintaining world peace. The fact is that the UN had little, if any, influence in preventing or settling major confrontations. Peace in Europe was maintained by NATO, not the UN. It was a United States-China standoff that ended the fighting in Korea. Nor did the UN play any role in the outcome of the Vietnam War or the three wars fought by India and Pakistan. Nor did it contribute much in the way of ending the Soviet occupation of Afghanistan.

(11) Six major committees report to the General Assembly—Disarmament and International Security, Economic and Financial, Social, Humanitarian and Cultural, Special Political and Decolonization, Administrative and Budgetary, and Legal. A number of Housekeeping Committees make recommendations on various topics including agenda and organization of work. There are 75 Special Committees that report on special issues. Three major commissions report to the General Assembly—International Law, International Trade Law, and Disarmament. Fourteen other organizations (created by the General Assembly) report to that body.

(12) According to UN figures, the United States owes \$1.3 billion in unpaid arrears, of which \$488 million is in dispute. Seventy five other countries, including Russia, owe \$559 million in unpaid dues. The United States has offered to pay a part of its back dues contingent on major UN reforms.

(13) An armistice in the Chechnya-Russia conflict called for a five year cooling off period before deciding the status of Chechnya.

(14) In 1992, the Secretary General of the UN declared Somalia to be without a government.

(15) “World Population Statistics 1985-2025, *The Encyclopedia of the UN and International Relations* (1990), p. 1089.

(16) Lord Thomas Babington Macaulay in a letter written to Henry S. Randall, May 23, 1857.

(17) Observer status at the UN is granted to Switzerland and the Holy See.

(18) A major instance where a UN vote worked against long run U.S. interests and ultimately world peace was the 1979 vote in the General Assembly to deny UN membership to the Republic of China (Taiwan) and recognize the People’s Republic of China as the sole representative of the Chinese people. The fact that the United States demonstrated unbelievable ineptitude in the run up to the vote is acknowledged, but beside the point.

(19) Albright, Madeleine K., Quoted in: “*Restoring American Leadership: A U.S. Foreign and Defense Policy Blueprint*,” The Heritage Foundation (1996), p. 155.

APPENDIX A

ADMISSION DATE AND 1997 PER CAPITA INCOME FOR SELECTED MEMBER STATES

Afghanistan, Republic of (b,d)	Cyprus
Albania, Republic of (d)	Czech Republic (a)
Algeria	Denmark (a)
Andorra, Principality of (d)	Djibouti, Republic of (b,d)
Angola, Republic of (c,d)	Dominica (d)
Antigua and Barbuda (d)	Dominican Republic (a)
Argentina (a)	Ecuador (a)
Armenia, Republic of (c)	Egypt (a)
Australia (a)	El Salvador (a,d)
Austria	Equatorial Guinea (c,d)
Azerbaijan, Republic of (c)	Eritrea (b,d)
Bahamas	Estonia
Bahrain	Ethiopia (a,b,d)
Bangladesh, Peoples Republic of (c,d)	Fiji, Republic of (d)
Barbados (d)	Finland
Belarus (a)	France (a)
Belgium (a)	Gabon
Belize (d)	Gambia (c,d)
Benin, Republic of (c,d)	Georgia, Republic of
Bhutan, Kingdom of (b,d)	Germany
Bolivia (a,d)	Ghana (d)
Bosnia and Herzegovina	Greece (a)
Botswana (d)	Grenada (d)
Brazil (a)	Guatemala (a)
Brunei Darussalam	Guinea, Republic of (b,d)
Bulgaria	Guinea - Bissau (b,d)
Burkina Faso (b,d)	Guyana (d)
Burundi, Republic of (b,d)	Haiti (a,b,d)
Cambodia, Kingdom of (b,d)	Honduras (a,d)
Cameroon, Republic of (c,d)	Hungary
Canada (a)	Iceland
Cape Verde (d)	India (a,c)
Central African Republic (c,d)	Indonesia
Chad, Republic of (b,d)	Iran, Islamic Republic (a)
Chile (a)	Iraq (a)
China, Peoples Republic (a)	Ireland (a)
Colombia (a)	Israel
Comoros, Federal Islamic Republic (b,d)	Italy
Congo, Democratic Republic (b,d)	Jamaica (d)
Congo, Republic of (c,d)	Japan
Costa Rico (a)	Jordan (d)
Cote d'Ivoire (c,d)	Kazakhstan
Croatia, Republic of	Kenya (c,d)
Cuba (a,c)	Korea, People's Republic (b)

Korea, Republic of (c,d)
Kuwait
Kyrgyzstan (c)
Lao, People's Democratic Republic (c,d)
Latvia
Lebanon (a,d)
Lesotho, Kingdom (c,d)
Liberia (a,b,d)
Libya
Liechtenstein, Principality (d)
Lithuania
Luxembourg (a)
Macedonia (d)
Madagascar, Republic of (b,d)
Malawi, Republic of (b,d)
Malaysia
Maldives, Republic of (c,d)
Mali, Republic of (b,d)
Malta
Marshall Islands (c,d)
Mauritania, Islamic Republic (c,d)
Mauritius, Republic of (d)
Mexico (a)
Micronesia (c,d)
Moldova
Monaco, Principality (d)
Mongolia (c,d)
Morocco, Kingdom
Mozambique, Republic of (b,d)
Myanmar, Union of (b,d)
Namibia (d)
Nepal, Kingdom (c,d)
Netherlands (a)
New Zealand (a)
Nicaragua (a,c,d)
Niger (b,d)
Nigeria (c)
Norway (a)
Oman, Sultanate of
Pakistan (c)
Palau, Republic of (d)
Panama (a)
Papua New Guinea (d)
Paraguay (a)
Peru (a)
Philippines (a)
Poland (a)
Portugal
Qatar, State of

Romania
Russian Federation (a)
Rwanda (b,d)
Saint Kitts and Nevis (d)
Saint Lucia (d)
Saint Vincent and the Grenadines (c,d)
Samoa, Western (c,d)
San Marino, Republic of (d)
Sao Tome and Principe (b,d)
Saudi Arabia (a)
Senegal (c,d)
Seychelles (d)
Sierra Leone (b,d)
Singapore
Slovakia
Slovenia, Republic of
Solomon Islands (d)
Somalia (b,d)
South Africa (a)
Spain
Sri Lanka (d)
Sudan (c,d)
Suriname, Republic of (d)
Swaziland, Kingdom of (d)
Sweden
Syrian Arab Republic (a)
Tajikistan (b)
Tanzania (b,d)
Thailand
Togo (c,d)
Trinidad and Tobago
Tunisa
Turkey (a)
Turkmenistan
Uganda (c,d)
Ukraine (a)
United Arab Emirates
United Kingdom (a)
United States of America (a)
Uruguay (a)
Uzbekistan (c)
Vanuatu (c,d)
Venezuela (a)
Viet Nam (b,d)
Yemen (c)
Yugoslavia (a)
Zambia (b,d)
Zimbabwe, Republic of (c,d)

- (a) = original member, prior to 31 December 1945 (51)
- (b) = 1997 per capita GDP or \$1,000 or less (30)
- (c) = 1997 per capita GDP of \$1,001
\$2500 (36)
- (d) = .01 percent assessment of UN budget (91)

Sources: "Nations of the World," *1998 Collier's Yearbook*; "The United Nations at a Glance," *UNA-USA Publications, 1997*; *Chronology and Fact Book of the United Nations, 1941-1991* (Chapter 11, Table 1).

APPENDIX B

BUDGET OF THE UNITED NATIONS, 1946-1997-98*

Year	Budget in Thousands of U.S. Dollars	
1946	\$19,390	
1947	28,617	
1948	39,825	
1949	43,204	
1950	44,521	
1951	48,926	
1952	50,548	
1953	49,869	
1954	48,529	
1955	50,228	
1956	50,683	
1957	53,175	
1958	61,122	
1959	61,657	
1960	65,735	
1961	71,649	
1962	85,818	\$1,053,216
1963	92,877	
1964	102,949	
1965	108,473	
1966	121,081	
1967	133,084	
1968	141,788	
1969	156,967	
1970	168,957	
1971	194,628	
1972	208,650	
1973	233,820	1,366,274
1974-75	612,550	
1976-77	745,814	
1978-79	1,084,186	
1980-81	1,339,151	
1982-83	1,472,962	
1984-85	1,611,551	
1986-87	1,711,801	8,578,015
1988-89	1,749,000	
1990-91	2,188,000	
1992-93	2,375,000	

1994-95	2,632,000	
1996-97	2,608,000	
1997-98	2,610,000	12,022,000

*Years 1946 to 86-87 exclude peacekeeping operations. Biennium budgets begin in 1974-75. Years 1990-91 to 1997-98 rounded.

Sources: *Chronology and Fact Book of the United Nations, 1941-91* and *The World Almanac and Book of Facts, 1997 and 1998*.

APPENDIX C

UNILATERAL AND VOLUNTARY REDISTRIBUTION OF WEALTH AMONG NATIONS

While the transfer of wealth between nations has been going on almost since the beginning of recorded history, this appendix will concern itself only with redistribution of wealth since the end of World War II, and more particularly, transfers made voluntarily and unilaterally by individuals, private organizations, and the U.S. government.

As among governments, methods have been many and varied, including arranged marriages, outright piracy (Sir Francis Drake), reparations (loser to victor in World War I), voluntary exchanges (America's Louisiana Purchase), outright grants (Marshall Plan) and Lend Lease arrangements of World War II.

Transfers by individuals and private organizations also have a long history. Let, for example, an earthquake or other calamity occur anywhere in the world and new or existing channels will immediately become available to distribute private contributions. The International Red Cross, the Salvation Army and numerous religious organizations come immediately to mind. A recent private transfer of wealth by an individual is the pledge by media mogul, Ted Turner, of \$1 billion to be used by the UN for humanitarian purposes.

Since the end of World War II, the United States, acting unilaterally, has been the largest foreign aid donor (redistributor of wealth) in the history of the world. In the period 1945-86, United States foreign aid totaled \$257 billion. During the past 12 years, various American foreign aid programs have been between \$12-15 billion annually. The 1998 foreign aid bill was \$12.8 billion. (1) However, these huge, taxpayer funded, gifts and grants have not been without their critics. A 1997 Heritage Foundation study noted:

- * Sixty eight percent of U.S. foreign aid recipients voted against the United States a majority of the time, up from 64 percent in the 1995 session. Thus, two out of every three foreign aid recipients voted against the United States most of the time.
- * Of the ten largest U.S. foreign aid recipients, six voted against the United States more than half the time.
- * The top ten countries voting against the United States in the UN most of the time received some \$323 million in U.S. foreign aid in 1997.(2)

A significant number of Americans, if not a majority, are critical of U.S. foreign aid policy. This criticism has been constantly reflected in the Congress where the annual foreign aid bill is bitterly contested as to amount and donor recipient.

One approach to redistribution of wealth among nations with respect to the United States would be to abolish government to government transfers. In its place transfer of wealth would be voluntary and left entirely to the private sector. This is not a new concept. American citizens and legal residents have a long history of “sending money home” whether it be the Mexican field worker remitting part of his wages or just plain Jock McKenzie making a contribution to the National Trust For Scotland. American corporations also have a long history of in-kind and cash contributions to humanitarian foreign organizations.

Under such a system of wealth transfer, the role of the U.S. government would be limited to screening various foreign charitable organizations seeking private sector American contributions much as the Better Business Bureaus screen domestic charitable organizations and make their findings available to the public. And just as the federal government grants a tax deduction for contributions to charitable domestic causes, so too could it grant, within limits, tax deductions to private sector entities be they individuals or businesses.

Under present law, a church member may make a contribution to his/her church and the church may then send all or a part to its foreign missions. However, an individual lacking a tax deductible “middle person,” can claim no deduction for a foreign contribution no matter how worthy.

(1) “The 1998 Foreign Aid Bill: Congressional Priorities.” *USIS Washington File, 20-11-97.*

(2) “*Does Foreign Aid Serve U.S. Interests? Not at the United Nations,*” The Heritage Foundation (April 15, 1997)

Limited Wars, Civilian Casualties, and Who Must Decide

by

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PREFACE

Strategic planning, as we understand the term, concerns the methods and mechanics of waging war. It is the business of the professional military men The formulation of military policy, on the other hand, means to us the determination of whether and when and under what circumstances and for what purposes we should go to war. It concerns political decisions rather than military methods and is the business of the Congress and ultimately of the people in our democracy.

**From an editorial "Policy and Strategy"
The Providence Journal
September 19, 1949**

When the 104th Congress convened in January 1995, a long simmering debate came to a boil over a proposed display of the Enola Gay at the Smithsonian's Air and Space Museum in Washington, D.C. The Enola Gay was the B-29 that dropped the atom bomb on Hiroshima on 6 August 1945. Peace activists and some historians, who considered the bombing an American disgrace, favored graphic depictions and narratives describing the bomb's devastation. Veterans' groups and others objected. They wanted text material that explained what led to the bombing -- the already high American casualties in the Pacific War (150,000 killed or wounded on both sides in the battle for Okinawa alone) -- and note taken on the projected allied and Japanese casualties when Japan's home islands were invaded.

Apologists for dropping the bomb base their case largely on the thousands of civilian casualties at Hiroshima and Nagasaki. The inference was that not only were these civilian casualties, but innocent civilian casualties.

This essay looks at the issue of civilian casualties in various types of armed conflict some 50 years later and discusses a number of questions that are but logical extensions of the Enola Gay debate.

In January of 1994, the U.S. Naval Institute published an article, "Getting It Right From . . . the Sea," by General Carl E. Mundy, Jr., Commandant of the U.S. Marine Corps. While the article dealt with the effective and efficient use of naval expeditionary (task) forces, primarily with

respect to regional conflicts, of equal interest was the way in which a commandant of the Marine Corps, perhaps the most no-nonsense branch of our armed forces, viewed (1) total and less than total wars, (2) collateral damage, (3) the use or non-use of various weapons in our arsenal, and (4) the political costs incurred when American armed forces are put in harms way. Not addressed, however, was whether senior military officers should share responsibility with political leaders, that is, become decision makers with regard to when and where to commit forces, with what weapons, and under what constraints.

To quote General Mundy:

In addition, we cannot ignore the political ramifications of collateral damage that even precision weapons can cause. In wars that are less than total-potentially, most of our future wars-we may not be able to use weapons, however effective, if their political cost outweighs their tactical gain. There may be a time and place when near perfect accuracy just will not be good enough. That is not a pleasant thought, but it is a consideration we cannot ignore when we look at new systems and the application of existing technologies. (3)

Questions:

What difference, if any, is there between total war and less than total war? What are the implications for our armed forces, particularly our combat forces, if a distinction is made?

Discussion:

The model for total war is World War II. The London blitz, the bombing of Coventry, Cologne, and Dresden, the siege of Stalingrad, the fire bombings of Japanese cities and the later use of atomic weapons, leave no doubt about the totality of the conflict. On the other hand, Korea, Vietnam, and the 1991 Gulf War were characterized by the restrained use of weapons and military options.

In total war, the goal of national leadership historically has been to bring about the surrender or unconditional surrender of the enemy.(4) The objective military function is to achieve this end at a minimum cost in lives and national treasure.

Total war is also an unambiguous concept and generally understood by those doing the fighting. Limited wars, on the other hand, imply limited goals and as such are ambiguous and complex concepts. This ambiguity requires that the nation's leaders, both civilian and military, constantly explain and rationalize the reason for the conflict, a task which becomes increasingly difficult as time passes and, casualties mount.

Again quoting General Mundy:

In the future, we will . . . be operating in a political environment in which there is an "economy of will." The American people will not tolerate high casualties in military operations they do not view as critical to our national security. Either under U.N. auspices, or multilaterally-or even unilaterally-many of our likely tasks will not affect the national security of the United States directly. Many of our future operations are going to have objectives that-while important in a regional sense-may not be seen as vital in Peoria.⁵

While ambiguous and complex politics are fairly open to debate by the electorate, from military tactics to broad issues of national policy, such debate cannot be limited to the home front. In an age of instant communication, the issues will also be argued at every level of the military establishment. After all is said and done, is the soldier, sailor and airman doing the fighting more willing to fight, and possibly die, for something he understands than for something he does not?

The use of limited military force and by definition, limited political objectives, has a poor track record in the West. Witness Korea, the Bay of Pigs, Vietnam, Lebanon, Iran and Iraq. Our cold war adversaries, however, used whatever force was necessary to achieve their objectives. Witness the swift dispatch of the Czech and Hungary uprisings by the Soviet Union, the crushing of Tibet dissidents by the Chinese People's Liberation Army, and the more recent crushing of Chechnya's rebellion by Russian military forces. Afghanistan was a Soviet failure but only because the United States decided to contest the outcome.

Question:

Is weaponry for total war significantly different than weaponry for less than total war? Under what circumstances, if any, is the use of atomic weapons an option? If there is a difference between weapons dependent upon what type of conflict is being waged, what is the implication for defense spending?

Discussion:

Improving weapon accuracy, that is, hitting what you aim at with a high probability of success, is certainly an acceptable goal of military research and development. The more accurate the weapon, the less chance it will have to be used a second or third time. The savings is easily identifiable in terms of lives and material. The problem, however, is not with developing so-called smart weapons but rather the argument that unless a weapon is highly accurate it should not be used at all, that is, cause collateral damage and kill innocent civilians.

From this point the debate can be extended to what constitutes an acceptable target. An ammunition factory, a bridge, a rail yard, an oil refinery, a column of tanks, government complexes . . . ? However, as the number of targets grows, as it will in all conflicts, the number of targets that can be more quickly destroyed by conventional but less accurate weapons will also grow. In a total war, no problem arises with respect to the choice of weapons. We use what accomplishes the task with the least cost in lives and material. In less than total war, however, an increasingly popular position is to use only accurate weapons aimed at strictly military targets. Carried to a logical end, this raises the question of how much money should be allocated to developing and producing sophisticated, "civilian friendly" weapons and how much should be spent for conventional weapons that are less accurate but more effective with respect to most enemy targets. Should a target be destroyed by naval guns, cruise missiles, or long range artillery with a minimum risk to military personnel or should a squadron of F-16s fitted with laser guided bombs be used with a much greater risk to men and equipment . . . very expensive equipment and very expensive men and women?

As to the willingness to use atomic weapons, peace as between NATO and the Warsaw Pact for the past 50 years was maintained not because a balance of conventional forces existed but rather the assured mutual destruction of both alliances should atomic weapons be used. While mass destruction weapons, biological and chemical as well as atomic, are hardly civilian friendly, they nonetheless kept the peace in Europe under the most trying of circumstances.

One might also ask-Is a fourth war between India and Pakistan more or less likely now that both are atomic powers? Or would conflict between Taiwan and Communist China be more or less likely if Taiwan, as well as the People's Republic of China, had nuclear weapons?

Question:

What is the distinction between armed conflict at whatever level and using our armed forces as peacekeepers in combat areas? What implication does such a difference have with respect to training doctrine?

Discussion:

The distinction between total war, less than total war, and peacekeeping as a military operation is simply one of degree. In total war, the use of available weapons is seldom constrained. Civilian casualties, innocent and otherwise, are accepted. In less than total war the use of available weapons is constrained while political goals constrain military options. In the role of peacekeepers, our armed forces must adapt to the role of a typical police force. When deadly force may be used is tightly proscribed . . . generally not to fire until fired upon. While we have not come to the point of "Mirandizing" a potential enemy . . . we are coming very close.

Developing a training doctrine for combat forces across a range of conflict situations is no easy task, if it can be accomplished at all. Infantry basic training which for the moment, still includes instruction in hand to hand combat where the objective is to kill or be killed, is hardly an option when the mission is to disarm an enemy but in no case do him bodily harm. Few would point to Somalia and Bosnia as success stories wherein military forces were used in a peacekeeper role.

Question:

What is the definition of collateral damage? Correspondingly, is there such a thing as innocent civilians in war, no matter what the conflict may be called?

Discussion:

Collateral damage is "spillover" damage inflicted on adjacent or nearby structures and populations when the intended target is destroyed or damage caused when the intended target is only partially destroyed or missed entirely. Collateral damage becomes visible and controversial when it includes civilian casualties.⁶

As to whether collateral damage in all of its aspects, including civilian casualties, can be avoided is an impossible question. It comes down to whether it is acceptable to kill a civilian while he/she is at work in a ammunition factory, railway yard or utility plant, as opposed to killing him in his home which was destroyed in an attack on an otherwise acceptable military target.

The other side of the coin is whether or not there is such a thing as a casualty-free conflict. One unintended result of the Gulf War is that the public has come to expect minimum military casualties when our forces are committed to combat. There is, however, a basic contradiction here. In many instances, weapons that inflict collateral damage are the ones that minimize the risk to our military personnel, while civilian friendly weapons are not only more expensive but increase the risk to those charged with delivering them.⁷

Question:

If a distinction is to be made as between a limited war and total war, where does responsibility lie with respect to deciding which type of conflict it will be?

Discussion:

As to which type of war our armed forces will be asked to fight and who is to decide should never be in question. The responsibility is that of the President of the United States.

Question:

If senior military officers become a part of the decision process, that is, decision makers, with respect to which type of war will be waged, can they then in good faith uphold and support the oldest of military traditions-an officer's responsibility for the well being and safety of the men and women under this command?

Discussion:

Few political leaders, whether presidents or other high level civilian decision makers, are willing to unconditionally accept responsibility for deciding under what circumstances to commit our armed forces and accept responsibility for the casualties that follow. President Harry Truman's decision to use atomic weapons against Japan and to accept full responsibility for his decision, is an exception to the general rule. On the other hand, the Vietnam War is a casebook study of where the line between traditional military decisions and political decisions became indistinguishable. The debate as to where blame lies for North Vietnam's conquest of the South is ongoing and probably will never be agreed upon.⁸

In deciding the level of conflict and, by definition, the constraints imposed, the Commander in Chief does not lack for civilian advice and expertise. Long recognized sources include the National Security Council, the State Department, the Central Intelligence Agency, the President's cabinet, his civilian appointees in the Department of Defense, and knowledgeable members of Congress.

Laying out costs in terms of casualties and material and the likelihood of success of various options put forth by civilian authorities is, however, a military responsibility. But tasking our military leaders to be part of the decision process with respect to deciding on the level of conflict and the constraints to be imposed on military action puts them in an untenable position with respect to their first duty-the well being of those under their command.⁹ By definition, this includes doing all possible to minimize casualties.

Conclusion

With the adoption of the American Constitution over 200 years ago, the United States asserted in unambiguous language that the nation's military would be subordinate to civilian authority. The power to declare war was delegated to the Congress.¹⁰ Also implied was that conduct of foreign policy rest with the Executive Branch of government.

Throughout World War II, the different responsibilities of the military, the executive, and Congress in time of conflict, as envisioned by the framers of the Constitution, were generally adhered to with little debate. After World War II, however, things changed. A Joint Chiefs of Staff, headed by a chairman, was specifically tasked to give advice to the President on military matters. The secretaries of War (Army), Navy and Air Force became subordinate to the Secretary of Defense with only nominal authority over the services they headed. The Office of the Joint Chiefs became in fact, if not name, a fourth branch of service.

Armed conflicts became police actions, regional conflicts, people's revolutions, insurrections, undeclared wars, covert operations, and United Nations missions, but never total wars. When General Mundy stated that most of our future wars will be less than total wars he should have also noted that all conflicts involving American forces over the past 50 years have been less than total wars.

Why conflicts in the last half of the 20th century were something less than total wars is not hard to understand given that the world was essentially divided into two powerful military alliances, each having the ability to destroy the other many times over. A declared war could escalate into a total war, a contingency which neither side wanted. Thus did armed conflicts become less than total wars with limited goals and constraints on military options while military options that might lead to total war were studiously avoided. In such a cold war environment decisions with respect to when and at what level conflicts should be fought became joint decisions between military and civilian leaders. And as in the case of most joint committee-type decisions, accountability for a particular decision made was no longer possible. The Vietnam War was a textbook case in this respect. Generals became politicians, politicians became generals, while combat forces became replaceable pawns in a seemingly never ending chess game.

A second result of keeping conflicts at a below total war threshold was a growing public expectation that less than total wars, whatever they were called, should be civilian casualty free.

Now, in the last decade of the 20th century, the world has changed again. With the collapse of the Soviet Union the probability of a total war on the scale of World War II has greatly diminished. In this new environment it is time to reexamine the decision making process which leads to committing American armed forces to combat. That a reexamination is called for can be seen in the public's resistance to committing our armed forces to conflicts where no overriding U.S. national interest is at stake as poll after poll has shown.

One way to address the public's concern is a return to accountability where our civilian leaders, and them alone, make the decision of when to commit forces, where to commit forces, and what constraints are to be placed on military action.¹¹ Once these decisions have been made, our military leaders become accountable for achieving civilian determined goals at the least cost in lives and material. But more important, those who lead can once again, in clear conscious,

carry out their first dutyÑthe well being of those under their command. Field Marshall William Slim, commanding officer of British forces in Burma in World War II, probably said it best and for all time:

I tell you, as officers, that you will not eat, sleep, smoke, sit down, or lie down until your soldiers have had a chance to do these things. If you will hold to this, they will follow you to the ends of the earth. If you do not, I will break you in front of your regiments. 12

Stated another way by a civilian:

When an officer accepts command of troops, he accepts not only the responsibility of accomplishing a mission, but the guardianship of those who serve under his command. The military hierarchy exists and can function because enlisted personnel entrust their well-being and their lives to those with command authority. When those in command authority either abdicate that authority or neglect that guardianship, more is lost than lives. Lost also is the trust that enables those who follow to follow those who lead. 13

Representative Dan Daniel, In hearings on the Beirut tragedy:

To paraphrase Field Marshall Slim. "Give our forces a clearly stated reason to fight for a clearly stated end. Do all in our power to minimize the inevitable casualties they will suffer, including use, as appropriate, all weapons available. Do this and they will be little concerned with what the conflict is called."14

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In 1986-87, Whitehurst was a Fulbright Scholar in India. Following his retirement from active teaching at Clemson University in 1988 he resided in the Republic of China on Taiwan for two years, 1988-89 and 1991-92, as a Visiting Research Professor at the National Chiao Tung University. While in Taiwan he lectured at the R.O.C. Naval Academy and the Armed Forces University. In 1992 and 1994 Whitehurst was Visiting Professor at the Curtin University of Technology in Perth, Australia where he lectured and did research in the area of transportation and logistics.

During his academic career, Whitehurst has authored five books, a number of major research reports, and 125 articles and papers, primarily in the area of transportation and defense studies. In 1991 he received the Distinguished Educator Award from the National Defense Transportation Association and was also named Paul Hall Memorial Lecturer for that year.

**CRITICIZING INDIA'S NUCLEAR WEAPONS PROGRAM
BEARS A HIGH PRICE**

by

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May 20, 1998

**THE
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CRITICIZING INDIA'S NUCLEAR WEAPONS PROGRAM BEARS A HIGH PRICE

**By
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**The Strom Thurmond Institute of Government and Public Affairs
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May 20, 1998

President Clinton's most adamant critics concede that he is a master at maintaining political support among a smorgasbord of interest groups. Now, with the explosion of five nuclear devices by India, he has reached out to two more constituencies—the anti-all-things-nuclear crowd and the disarmament vote. But, there is a downside to this shot-from-the-hip condemnation of India.

First, let's deal with economic sanctions. Will they have any impact on India's behavior? The answer is a resounding, Yes! Whatever goodwill had been built up in India since the end of the cold war will be severely eroded as will America's ability to influence India's policy in other areas important to our national interests. And American prestige will be further damaged when economic sanctions are shown to have little, if any, long-term effect on the Indian economy.

No matter what appeals or threats the United States might make, it is a certainty that Pakistan will accelerate its nuclear weapons program either overtly or covertly, or both. This leads to an interesting question: If both India and Pakistan have nuclear arsenals, is conflict between them more or less likely, remembering (that the two countries have fought three wars since their independence from Great Britain. Based on the incontrovertible fact that peace in Europe between 1948 and 1990 -- some 42 years -- was maintained, not by a balance of conventional forces between NATO and the Soviet bloc, but by the realization that any conflict could escalate into a nuclear war. Nuclear weapons kept the peace in Europe and there is no reason why a nuclear armed India and Pakistan would not adhere to the same reasoning.

The CIA recently reported that 13 of the People's Republic of China 18 long-range missiles are aimed at U.S. cities. Even the most benign interpretation of this fact must conclude that the PRC considers the United States its most likely long-run enemy. The PRC attitude is not unlike Japan's view of the United States in the 1920s and 1930s. Nor can any rational argument be made that the PRC's rapid expansion of its conventional military forces is anything but a desire to be the dominant power in East Asia. If one considers that a mutual non-aggression pact between Russia and China is likely, if not already in place, the question is what counterweight or possible counterweight exists to thwart PRC hegemony in East Asia?

Japan is a U.S. ally but the extent of its involvement in a Sino-U.S. conflict is still questionable. But what other consideration might influence PRC calculations as it weighs its expansionist policies? One might be the existence of a nuclear-armed, democratic India, a country which has already fought a border war with the Peoples Republic of China.

President Nixon played the China card in our Cold War struggle with the Soviet Union, although such was always officially denied. In May of 1998, the United States discarded the "India card." And for what? Fleeting applause from a worldwide audience that has proven to be fickle..

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CHINA'S MISSILE POLICY

by

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STI COMMENTS ON PUBLIC AFFAIRS

CHINA'S MISSILE POLICY

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**Why would China target the United States
with 13 strategic, questionably accurate, nuclear
missiles when the United States could respond, not
with a baker's dozen, but with thousands
of nuclear warheads of proven accuracy?**

A recent CIA report said that 13 of China's 18 long-range missiles are targeted at U.S. cities. Assuming the report to be accurate, it seems quite clear that the People's Republic of China considers the United States to be its long-term enemy, not unlike the view held by Japan in the two decades preceding the attack on Pearl Harbor. Given the above, it is a certainty that the United States has already, or can within minutes, target hundreds of mainland China cities, military installations, major industrial activities and key transport hubs. It would seem the last thing leaders of the People's Republic of China would want is an exchange of missiles. So, what is the logic behind the PRC's decision to commit most of its long-range missile force against the United States? What clash of U.S.-China interests would be important enough to risk igniting a war between the two countries? Some possible issues include:

- (a) A showdown over human rights abuses in China and/or China's oppression and brutal treatment of the Tibetan people. Conclusion: Much rhetoric, but conflict between the United States and China over the issue is highly unlikely.
- (b) Overt Chinese military aggression against other East Asian countries. Given firm U.S. commitments insuring the security of Japan, the Republic of Korea, and the Philippines, overt aggression in northern East Asia by China's leaders is considered unlikely. Nor does China have a navy capable of mounting a sustained threat to nations farther to the south. e.g., Malaysia, Indonesia, and Brunei. Moreover, the United States has a mutual security treaty with Australia and a small naval presence in Singapore, while Thailand's security benefits from a number of defense arrangements with the United States. Local skirmishes over the Spratley and Parcel Islands are quite possible but would not directly involve the United States.
- (c) Border conflicts with PRC neighbors--Russia, India and Vietnam. Two of the three are nuclear powers while Vietnam has demonstrated it has the ability to not only defend its border but inflict significant losses on the People's Liberation Army should it attempt an invasion (Vietnam has the 2d largest ground force in East Asia). In the north, economic gains from a PRC-Russia rapprochement are sufficiently great to minimize the likelihood of local border incidents escalating into a major conflict.

And while India is indirectly supportive of Tibetan autonomy, it otherwise has no designs on PRC territory, but like Vietnam, has demonstrated a capability to protect its northern borders. Other nations on China's borders--Nepal, Bhutan, and Laos maintain a benign relation with Beijing, with no history of major border incidents. For all intent and purpose, Myanmar (Burma) is a PRC ally. Direct American intervention should even a major border conflict breakout in any of the above regions is highly unlikely.

(d) A change in the U.S. "One China" policy, that is, diplomatically recognize Taiwan should the island opt for independence. This is extremely unlikely given that America's "One China" policy has been endorsed by both Republican and Democrat administrations. Recognition, should it occur, would only follow after, not before, a conflict with China. The United States has also made it quite clear that should the Republic of China on Taiwan declare its independence, there would be no military intervention on its behalf..

(e) The People's Republic of China decides to use military force to reunite Taiwan with the mainland using any or no pretext for its action and is fully aware of the U.S. commitment to assist Taiwan as spelled out in the Taiwan Relations Act (Public Law 968, 96th Congress) Section 2b (4,5,6) of the Act is quite clear in this respect.

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

It is argued here that only the use of military force by the PRC against Taiwan could trigger a U.S. response that could lead to conflict. (The PRC has a number of options should it seek reunification with Taiwan by military means -- a sea blockade, an air-sea blockade, invasion or by any combination of the above.)

The next question is -- what would be the dimensions of the conflict should it come? There is an axiom as old as military doctrine itself that says the opponent that can choose the location and terms (parameters) of the conflict will be the likely winner. General Robert E. Lee ignored the axiom, and with the failure of Pickett's charge, doomed hopes for Southern independence.

With this axiom in mind, what is the most likely strategy of the People's Republic of China should conflict with the United States come about? First, limit the weapons of engagement, i.e., avoid a nuclear exchange of strategic missiles. How could this be accomplished? By deploying a sufficient number of strategic, so-called "Long March" missiles against a sufficient number of U.S. targets. The operative word is "sufficient." In other words, how many PRC missiles would have to be U.S.-targeted for the United States to accede to a defacto agreement that neither the United States or China would launch missiles against one another's territory, that is, against mainland China or the United States and its territories? Thirteen? Twenty? The point is that China does not have to even come close in matching the United States missile for missile.

The second PRC task or goal would be to minimize the effect of U.S. air power based in Japan and the strike capability of the U.S. 7th fleet. In the first case, Japan could be threatened with nuclear armed missiles (DF21/M9) if it allowed U.S. based aircraft to support Taiwan militarily. Here lies the American dilemma. To threaten China with a nuclear counter strike and risk a strategic missile attack on the U.S. or to "go it alone" using U.S. Pacific island (e.g. Guam) based aircraft and 7th fleet carrier based planes. And what of the 7th fleet? China's strategy here would be to minimize its effectiveness and the best way to accomplish that is to force it as far back in the Western Pacific as possible. This would require state of the art land and sea based cruise missiles, in sufficient numbers capable of attacking and sinking surface combatants, including aircraft carriers.

Thus outlined is China's two missile policy. The first leg is a strategic missile capability with pinpoint accuracy a secondary consideration. What is really the difference if ground zero is Sacramento or San Francisco or Tokyo or Yokohama? The second is having a large inventory of accurate land and sea based cruise missiles. Of the two, the latter is far the more important.

American Options

To counter the threat of a PRC invasion of Taiwan, that is, make such a decision one of high risk and high cost, the United States could:

(1) Accelerate U.S. missile defense. Till now concentration has been on acquiring technology while avoiding hardware deployment. However, even deployment of a less than accurate, less than complete defense would still give China's military leadership pause. Second and more important, budget whatever is necessary for cruise missile defense to insure that the 7th fleet can accomplish its stated purpose--power projection in the Western Pacific which translates into being near enough to Taiwan to make a difference.

(2) Give serious consideration to providing Japan with a stockpile of nuclear weapons with delivery systems capable of reaching all geographic areas of China and without a U.S. veto on their use. One positive aspect of this option would be that Japan would have a counter to a threatened PRC nuclear attack. The decision to use nuclear weapons would not be America's to make, a fact that should weigh heavily on any PRC decision to threaten Japan. Even discussion of such an option in the Congress could influence a decision by the PRC to attack Taiwan. .

(3) Make it clear to the PRC that as soon as a military threat against Taiwan is confirmed, the United States will deploy air, ground and naval forces on Taiwan. Time would be of the essence for this option with detailed plans to carry out such a deployment well rehearsed and in place.

(4) Make it clear that a PRC attack on Taiwan would invoke a worldwide naval war, that is, an attack on Chinese merchant shipping coupled with an air-sea blockade of mainland China.

The above options are well within the capability of the United States. Nonetheless with respect as to how a conflict with the PRC would be fought remains the same. To the greatest extent possible, the United States must deny China's military leadership the exclusive choice of location, tactics and weapons.

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**DOES SOUTH CAROLINA HOLD THE
HIGH MORAL GROUND IN LAWSUITS
AGAINST TOBACCO COMPANIES?**

by

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by

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The defining question in many civil and criminal legal actions is “What did he/she/they know and when did they know it?” In the current litigation between the several states and tobacco companies, the question is “What did the tobacco (cigarette) manufacturers know about cigarette smoking as a health hazard and when did they know it?”

The same question(s), however, could be asked of the individual smoker and the responsible state health bureaucracy. In cases where individuals sue tobacco companies for alleged health problems due to smoking, the courts have generally held the individual responsible on the grounds that he/she was aware or should have been aware of the health risks involved. In this regard, The U.S. Surgeon General in 1964 warned that cigarette smoking was a cause of cancer in men and possibly in women. In 1965, Congress required labels on cigarette packs -Caution: Cigarette smoking may be hazardous to your health. And in 1967, a Surgeon General report concluded that smoking was a principal cause of lung cancer.

In 1970, cigarette advertising was banned on radio and TV while a stronger health warning was required on cigarette packages. In 1990 smoking was banned on U.S. domestic airline flights. And in 1991 the federal cigarette excise tax was increased to 20 cents/pack and two years later further increased to 24 cents/pack.

With respect to the tobacco companies, the relevant question is again what did they know about the relationship between smoking and health and when did they know it? But could not the same question be asked of the several states, including the State of South Carolina? If individuals are held to be aware of the risks of smoking, is it not fair to point out that responsible state officials should also have been aware of the hazards involved? (A more recent issue is whether cigarette smoking is addictive and if so should it be considered a controlled substance?)

At last count, some 22 states, including South Carolina, had filed or were considering filing lawsuits against the major tobacco companies seeking to recoup the millions of dollars spent for smoker’s Medicaid bills. But are these states on the high moral ground? Did they not have a paramount interest in determining the validity of, and acting upon, the Surgeon General’s warnings? Unlike individuals, the states not only had a duty but more important, the resources to investigate the issue. There is a saying as old as the common law itself, “When one seeks equity, come before the court with clean hands.” In this respect, it is no defense to argue that South Carolina and other states

were fulfilling their responsibility by deferring action to the federal government. In many instances, states have gone beyond federal requirements and warnings about safety and health issues. For example, a number of states have stricter air pollution and water quality standards than those mandated by Washington.

As to possible reasons why South Carolina was unwilling to independently pursue the relationship between smoking and health, two are suggested here. First, South Carolina is a tobacco growing state. A sustained investigation to determine the relationship between smoking and health would hardly be a vote getter among a large part of the agricultural community. Second, South Carolina was and does collect taxes on tobacco products, principally cigarettes. In FY 1963-64, South Carolina collected over \$12 million in tobacco taxes. In 1987-88, the highest tobacco tax revenue year, the take was \$30.6 million. Between 1962-63 and 1995-96, the state received approximately \$795 million in tobacco tax revenues. While South Carolina's tax on cigarettes (2.4 mills per cigarette in 1964 and 3.5 mills in 1998) is modest in comparison to some jurisdictions (Washington, D.C. has a \$6.50 per carton cigarette tax, the state of Washington a 82.5 cents per pack tax) it is nonetheless revenue from a tainted source as inferred in the briefs filed against tobacco companies. Put another way, South Carolina and other states are seeking punitive damages caused in part by their own misconduct and/or negligence.

It is hardly becoming a state that prizes state's rights and individual and local government responsibility, to assert that it is an exclusive federal function to determine what is or is not a health risk to the citizens of South Carolina. In football, piling on after a play is dead is disciplined by the referee. In the case cited here, the only restraint is that South Carolinians are better people than that.

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**TECHNOLOGY AND THE
PROTECTION OF
INTELLECTUAL PROPERTY**

by

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TECHNOLOGY AND THE PROTECTION OF INTELLECTUAL PROPERTY

There are conflicts and there are conflicts, and not all involve the clash of armies, navies and aircraft. Some are silent—no gunfire or bombs exploding—but the stakes are as high or higher than in many armed confrontations. One such conflict is between those who own/control intellectual property and those who want it, and will take it, without paying the asking price.

In 1994, over 206,000 U.S. patents were applied for and over 113,000 patents issued. In 1993, over 48,000 patents were granted to residents of non-U.S. areas. In the same year, 161,000 trademarks were applied for and over 70,000 were granted. In 1995, copyrights in effect totaled 609,200. So much for the legendary clerk in the U.S. Patent Office who quit his job in the early 19th century reasoning that there was nothing more to invent. (1)

Patents in effect worldwide at the end of calendar year 1993 are shown in Table 1.

TABLE 1

PATENTS IN EFFECT WORLDWIDE AT THE END OF CY 1993

	Patents in Effect	
	Number	Percent
Granting Authority		
U.S. Patent and Trademark Office	1,131,239	29.1
Japanese Patent Office	631,063	16.2
Contracting States of European Patent Convention	1,369,545	35.2
Others	759,071	19.5
TOTAL	3,890,918	100.0

Source: *Trilateral Statistical Report, PTO (1994)*

However, sheer numbers are only part of the problem and probably the lesser part. Enforcement of patents, copyrights and trademarks is the issue that often pits government against government and many times spills over into trade sanctions and tariff and quota wars, all of which inhibit free world trade.

One of the oldest instances of “copyright infringement” is the counterfeiting of currency. Another is plagiarism—the taking of another’s thoughts, ideas, and words without attribution or compensation. In the former, governments have generally been successful (but not always) in protecting the integrity of their currencies by vigilance and exacting a high criminal cost on perpetrators, while in the latter, ethical and moral societies limited unearned gains. By the 1950s, however, the guys in the white hats were losing. In fact, it was no longer all that clear who the good guys were. (2)

Historically, protection of intellectual property rights with respect to the written word (copyrights on books, journals, newspapers, etc.) was fairly easy to safeguard. True, books could be reprinted without permission but printing and distribution costs were high and the copyright infringer relatively easy to identify. The greatest obstacle then and now is the concept and exercise of national sovereignty, that is, when a nation refuses to adhere to/enforce international accords that protect intellectual property (patents, copyrights, trademarks) within its boundaries. (3) Absent the use of force, the only other options are to penalize the offending country by diplomatic and/or trade sanctions. To the extent that the latter inhibits free trade among nations then to that extent is the entire world the loser.

A body blow with respect to protecting the written word was the invention of the thermofax and later the plain paper (Xerox) copier. In 1997, the cost to copy a page of printed material is a matter of a few cents and falling. Nor has it been that long since the spoken word was preserved on wax, and later, plastic discs, i.e., long playing records. While unauthorized duplication was possible, it was still relatively expensive. But once again, technology in the form of the inexpensive tape recorders and tapes, and later CD discs and players, significantly lowered the cost of unauthorized duplication. The protection of spoken and visual intellectual property—the cinema and television—also suffered as technology gave us the video recorder/player and inexpensive video tapes.

The most recent and probably the most costly unauthorized duplication of intellectual property, is the unauthorized duplication of computer software. Relatively inexpensive home computers have this capability. Nor is pirating software on a grander scale all that difficult.

Still another case of where technology has decreased the value of an artistic asset are negatives of the ubiquitous family photographer. Not too long ago a photographer would spend both time and talent getting a “just right” family picture. The negatives from which additional copies were made, in a sense, were his intellectual property. Though not illegal, state of the art color copiers can reproduce quality family, or for that matter, any photograph, at a fraction of the cost of using a photographic negative.

A final emasculation of legal copyright protection is the ability, in many cases, of the TV viewer to capture satellite transmissions of visually transmitted material. A satellite dish is all that is required. In an attempt to thwart such piracy, program owners have “scrambled” satellite transmissions. At best, they have only slowed the inevitable. That technology will some day be able to unscramble these transmissions, and at very little cost, is a foregone conclusion.

When all is said, technology has made it quite simple for the individual to ignore copyright laws with little chance of apprehension. And while the number of individual copyright infringements can only be guessed at, what is certain is that technology has made many of us felons in the strict sense of the term.

While patent violations are generally not as numerous as copyright violations, they can raise even more complex issues. One of the most common is the unauthorized manufacture of pharmaceuticals. This is particularly true in the world’s poorer countries. In essence, the argument put forth by these countries is that high priced drugs should not be denied to those who cannot afford them. Arguments that research costs must be recovered and that for every successful drug developed, there are many dozens of failures, are dismissed on ethical and humanitarian grounds. When national sovereignty is invoked to protect such pirating, the only recourse left is diplomatic and/or trade restrictions. Or in the case of developing countries, denial of foreign monetary and technical assistance.

In some cases, the issue of patent protection while manufacturing under license can cause a major clash of national interests. A case in point is when the Reagan administration attempted to deny U.S. gas pipeline technology to the Soviet Union. The problem was that a significant part of this technology was manufactured in Europe under license. The Europeans strenuously resisted American attempts to interfere with multi-million dollar contracts being negotiated with the Soviet Union. The issue was settled but not without large helpings of bitterness and acrimony on both sides.

Trademarks as intellectual property and the protection of trademarks is a more subtle issue. (4) Unauthorized use of a registered trademark is fairly easy to identify. Moreover, such infringements are hard to justify on humanitarian

grounds. More often than not, those who intend to benefit from unauthorized use of a trademark will not copy the protected trademark exactly, but come as close as possible. Given a sympathetic judiciary, the pirated, nearly alike, trademark can then be legitimized within a national boundary.

If it is granted that intellectual property is, in fact, a property right and deserving of protection, then two questions must be addressed. The first is how to protect intellectual property from unauthorized use by the individual? Second, how to protect intellectual property from commercial exploitation, particularly in those countries which invoke national sovereignty as a means of circumventing international treaties and conventions?

OPTIONS AND STRATEGIES

The case of unauthorized use of intellectual property by the individual is difficult, if not impossible, to completely solve. Policing costs would greatly exceed any benefit the owner of the intellectual property might receive. If a case study is needed, Britain's one time policy of imposing a tax on the owners of radios/TVs and the cost of enforcement are worth examining in a cost-benefit context.

One strategy that seems to be evolving is for the intellectual property right owner to reap the benefit of his property right more quickly than has been the case in the past. The trend is most evident with respect to property rights in books, videos and recordings. In the case of books, the time between when a book is published in hard cover and when it is made available as a paperback has significantly decreased. Many buyers will simply wait for a desired book to be released in paperback at a fraction of the cost of the hard cover. With an assured lower price in the near future, there is less of an incentive to illegally reproduce or purchase a pirated copy of the book in question.

The same strategy is also emerging with respect to video tapes of television productions and movies. The time between when a movie or television production is released and when a video version is available has markedly decreased. The individual that wants to see a particular movie/television production can expect it to be available at his video rental store in a relatively short time. Or should he wish to own the video, he will find the price considerably less in real terms than it was ten years ago. Thus, in the case of books, videos, and (cassette) tape recordings, low cost options that allow enjoyment of the protected intellectual property, may discourage unauthorized (illegal) reproductions.

In 1997, unauthorized copying of computer software is probably the most visible infringement of intellectual property rights. Not only is it the most visible, but also the most costly to the property right owner. But, as in the case of books, videos, and recordings, unauthorized use by an individual (using his home computer) is almost impossible to police. While it is true that the price of copyrighted software programs decrease over time, the usually high initial cost insures that unauthorized copying will remain an attractive option. (5) Also working against lower future prices is the fact that many of the most desired programs are constantly being updated. What is current last year, will probably be obsolete (less desirable) a year later. One option, but one that may not be economically viable, is for the software owner to avoid “quantum leaps” in upgrading his products. Improvements made in smaller increments, presumably at a lower price, may discourage unauthorized use, but this is far from certain. (6)

Three things seem certain. First, ending unauthorized use of protected intellectual property by the individual is almost impossible. Second, when the asking price of protected property is relatively low, the individual, after calculating the transactions cost for unauthorized use, will pay, as often as not, the asking price. It might also be noted that while technology has made unauthorized use of intellectual property simple and inexpensive, technology (and the competitive market place) can also be harnessed to insure that the asking price of intellectual property remains low.

Options to protect intellectual property rights in the international commercial marketplace include:

- Continue the status quo. Holders of intellectual property would continue to complain to their governments when international infringement occurred. Relief would depend upon their governments willingness and ability to act. In their own countries, property right holders would rely on the domestic judicial system to protect/enforce their rights.
- Raise the cost of infringement at the national and international level. This, of course, begs the question of how to do it and how high to raise the cost. Nor does it address the moral dilemma of poor nations and peoples that cannot, for example, afford life saving/enhancing pharmaceuticals that are protected by patents.
- Adopt an essentially socialist model wherein a national government rewards the holder of intellectual property. The distribution/use of the property is then determined by the government together with the

responsibility of preventing infringements. The flaw in this approach is—how much should or will government reward intellectual property owners? History suggests that rewards will be lower rather than higher which raises the issue of how to insure the incentive necessary to advance world knowledge in the arts and sciences. Moreover, the trend is in the opposite direction. Former socialist states are adopting the western view in which the marketplace, not government, rewards creative endeavors. (7)

- Develop an all inclusive model wherein government would share the risk in certain humanitarian research areas with the private sector, e.g. cures for AIDS and cancer. Variants of this model are found at many colleges and universities. The university provides various kinds of support for the researcher and shares in any income derived from patents issued. Similar models for providing support and sharing in the results of successful research are found in numerous federal facilities.
- Give the owner of intellectual property the option of (1) transferring his rights to government for a specified payment or payments, or (2) relying on the present system of enforcement.
- Develop a two tier international system for marketing the benefits of protected intellectual property in specific areas such as drugs, hygiene, and food production and preservation. Developing countries below a stated economic threshold would pay an agreed upon percent of marketplace determined license fees, royalties, etc. Countries eligible for preferred treatment would be periodically reviewed. In a two tier system the holder of the property right would receive something as contrasted with nothing as is now the case when a nation invokes national sovereignty as a means of circumventing any obligation to pay for the intellectual property in question.

A suggestion worth considering regardless of the option chosen is—delink GATT/WTO rules and regulations from international rules, procedures, and agreements that protect intellectual property. The regulation of international trade in goods and services is sufficiently different from international enforcement of intellectual property rights to warrant separate approaches and solutions. The present system penalizes advanced societies. As it stands, GATT/WTO standards for protection of intellectual property are less stringent than that desired by developed countries. No present option for insuring protection of intellectual property would be foreclosed by separating the two areas.

CONCLUSION

Protection of intellectual property as a continuing major national and international problem can be seen from a sample of recent news stories reporting on the subject.

US to speed up patents for anti-terrorist devices- (Washington—Patent applications for anti-terrorism inventions would receive ‘special status’ allowing them to be dealt with more quickly by the Commerce Department’s Patent and Trademark Office....Patent applications usually are examined in the order in which they appear on an examiner’s docket. If an applicant is granted ‘special status,’ his or her invention moves ahead of all others....)

Journal of Commerce, August 2, 1996

Piracy tapers off in Taiwan: But experts fear new wave possible- (Taipei—Like other newly prosperous cities in Asia, Taipei’s back streets include shops selling counterfeit CD and video recordings, computer software and designer clothes....The recognition and protection of intellectual property rights has become a key U.S. and European priority in recent years, as these regions have moved to safeguard their competitive advantage—ideas, trademarks and new technologies.... Analysts say violations here are starting to tail off for several reasons, including an increase in Taiwan’s own proprietary technology.)

Journal of Commerce, September 23, 1996

Music copywriters out of hand. (Greenville, SC—Americans were appalled to find out recently that Girl Scout troops around the country were being ‘shaken down’—forced to pay music copyright fees when they sing songs like ‘This Land Is Your Land’ around the campfire. They buy paper, twine and glue for their crafts—they can pay for the music too, grumbled the American Society of Composers, Authors and Publishers (ASCAP), which holds the copyrights to almost 4 million songs. And if the little campers kept it up, ASCAP threatened to ‘sue them if necessary.’)

Greenville (SC) News, September 24, 1996

Big Drug Makers Push Egypt, Other Nations To End Their 'Piracy' (Cairo—Egypt is defying foreign drug makers as it creates a home-grown pharmaceuticals industry. Local companies, insignificant before the 1980s, now supply two thirds of the nation's medicines. Their profit margins run as high as 26% and their executives ride in limousines...Its piracy, Pfizer and Glaxo say, but it's legal under Egyptian law, which provides only weak patent protection for drugs. The wrangling that produced the 1994 General Agreement on Tariffs and Trade (GATT) gave poorer countries 10 years to strengthen their drug-patent laws....)

The Wall Street Journal, December 13, 1996

U.S. to lower trade boom on Argentina: American firms claim pirated pharmaceuticals cost them millions (Washington—U.S. firms [claim they are] denied as much as \$500 million in income per year. Pharmaceuticals Research and Manufacturers of America said 'Argentina has reneged on repeated promises, over 17 years to provide effective patent protection.')

Miami Herald, January 15, 1997

Japan copyright agreement for musicians resolved (Tokyo—Tokyo agreed to backdate royalty payments to American copyright holders. Agreement was to backdate copyright protection for sales in 1950s and 1960s. Previous protection was only back to 1971. The European Union (EU) estimated loss of \$120 million/year through lost royalties.)

Miami Herald, January 17, 1997

Former Kodak manager, in secretly taped meeting, denies he'd sell secrets (Rochester, NY—Through a network of dozens of Kodak retirees and his own inside knowledge, Worden [former Kodak manager] is accused of stealing film-making trade secrets and selling them to rivals. Kodak cited nine known sales worth \$117,550. Mr. Worden denied the accusation saying 'I'm not in the business of selling secrets, and I'm not in the business of selling formulas.'

Greenville (SC) News, February, 1997

As the divergence in income/living standards between the rich and poor nations widens, the issue of who owns intellectual property and at what price, will not

go away. It seems fair to conclude that a large majority of the 185 some odd member countries of the United Nations, if given the means, would abolish or severely curtail intellectual property rights. And while protection of intellectual property as practiced in the western world will continue, howbeit at a high cost, it will continue only because so-called "Third World" nations lack the means to change the system. A second reasonable conclusion is that law firms (worldwide) that specialize in copyright/patent/trademark cases, will have more than enough work to keep them employed well into the 21st century.

NOTES

(1) U.S. Department of Commerce, *Statistical Abstract of the United States 1996*, 116th ed. In 1994, IBM was granted 1,298 patents, Xerox 611, and AT&T 595.

(2) The United States is a member of the Berne Convention (1989) and the Universal Copyright Convention (1955).

(3) Not considered in this paper, although still an infringement on property rights, is the counterfeiting of (usually expensive) merchandise, e.g., cameras, watches, designer clothes. Absent a “conspicuous consumption” motive, a buyer can usually protect himself by exercising reasonable care in making a purchase.

(4) The issue is further complicated by a requirement in most American states that trademarks also be registered in the particular state.

(5) A unique option for obtaining and paying for new computer programs is available on the Internet or Bulletin Board (SHAREWARE). An author makes available his program with a suggested price to be remitted to him. There is no prohibition against downloading the program nor is there an enforceable way to ensure compensation for the owner.

(6) In the recent past, some software owners upgraded their programs and as often as not, did not charge for the upgraded versions. The change to major upgrades at a greater frequency and at a price is the general rule in 1997.

(7) The socialist view with respect to intellectual property rights is precisely stated by Karl Marx—“from each according to his ability, to each according to his need.” The Christian admonition is much the same. “To whom much is given so too is much expected.”

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NATIONAL SECURITY—WORDS, WEAPONS OR BOTH

by

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Clemson, South Carolina**

April 1997

**THE
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STI NOTES AND COMMENTS

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**The Strom Thurmond Institute of Government and Public Affairs
Clemson University, Clemson, South Carolina**

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It is hardly news that amounts budgeted for America's defense have steadily declined over the past four years in both dollar outlays and share of the federal budget. And it is hardly less newsworthy that words in the form of communiques, white papers, policy statements, summaries, news conferences, treaties, and position papers, have dramatically increased.

Defense expenditures fell from \$291 billion in FY 1993 to \$265 billion in FY 1996, an annual decrease of approximately 3 percent. In the same period, military personnel decreased by about 132,000. On the other hand, the State Department's budget increased by \$100 million over the same time period although it had 1,900 fewer employees. And while there are no statistics available with respect to the increase in word output from the State Department, based on the number of daily news releases describing one diplomatic activity or another, it seems fair to conclude that the 3 percent decrease in defense spending is at least matched by a 3 percent increase in U.S. diplomatic word output. It would seem we have been substituting words for weapons. The question is whether this is a good tradeoff. Evidently Congress had some concerns. In 1996 it provided \$7 billion more in defense spending than requested by President Clinton.

The conventional justification for a decrease in defense spending is that the Cold War between the West and Soviet Union is over, hence the threat to America's national security is correspondingly diminished. While the part about the Cold War being over is obviously correct, it is the second part of the rationale that is troubling. Argued here is that the world is a far more dangerous place than it was 15 years ago. In this respect:

*An approximate military balance between the West and the Soviet Union existed. And while a major conflict could escalate and spread into a global nuclear war at a cost in lives and treasure beyond calculation, such a possibility was understood by both sides and acted as a restraint or military adventurism.

*Non- Soviet Union threats to the United States were essentially terrorists acts. While costly in lives and property, these attacks were still random with no government willing to acknowledge sponsorship. Moreover, American intelligence agencies were generally successful in thwarting such attacks or bringing the perpetrators to justice.

*While there were a number of countries in 1982 with the potential to openly challenge United States military power on a regional basis, these by and large were potential, not existing threats.

In 1997 it is another matter. The goal of smaller, essentially hostile countries such as Iran, Iraq, North Korea, Libya, and Syria is to develop and deploy nuclear and/or chemical-biological weapons. Our goal is to stop them. Both they and we have had some successes. Their success is that their programs are still on-going. Our success is that in some instances, through bribery or sanctions (words) we have slowed their development. We bribed North Korea to forgo developing nuclear weapons but our payoff is far from certain.

Fifteen years ago the Peoples Republic of China (PRC) was recognized as a potential military superpower. In 1997 “actual” is quite close to replacing “potential.” China has the world’s largest active duty military force (2,900,000) with 1.2 million in reserve. It has nuclear warheads and ballistic missiles. Its armor and military aircraft are among the world’s largest, and it is investing heavily in its naval forces with the goal of power projection. No combination of East Asian nations come even close to matching the PRC’s overall military capability. More important is that China has used and will use the threat of its military power to forward geopolitical objectives. The American response to keeping the dragon at bay has been words-trade preferences, most favored nation trade status, summits, and policy statements critical of China’s denial of basic human rights.

Many respected analysts, however, deny superpower status to the PRC. After citing America’s technological superiority in weaponry, they argue that China’s military capability is not global encompassing, that is, it could not simultaneously fight and win two major regional conflicts far from its borders. (U.S. defense planning rests on being able to fight and win two major regional conflicts simultaneously) The fallacy in this reasoning is that any future U.S. - PRC conflict will not be contested half a world away but rather in Asia and Asian waters. In this scenario, considering China anything less than a superpower is not only irresponsible but reckless in the extreme.

And then there is Russia. Admittedly not the Soviet Union of old, but a country nonetheless that still has a latent capability of returning to military superpower status. But before citing Russia’s present difficulties as a reason for complacency-its many economic problems, political instability, a growing population unrest, and the West pushing to expand NATO eastward--note should be taken that a wounded Russian bear is far less predictable than a healthy one.

If it is granted that the world is, indeed, a dangerous place in 1997, is there any historical wisdom to draw on. Actually, there is. President Theodore Roosevelt is credited with urging a policy of “speak softly but carry a big stick.” Freely translated it means less words and more military capability. The opposite would be to speak often (many words) and carry a small stick. Equally important--it is not entirely a question of more or less military capability but of a willingness to use it. Precisely applied in time and place, a small capability goes a long way. Few would disagree that Hitler could have been defanged in the mid 1930s by a judicious application

of limited force by Great Britain and France. Instead, words were substituted for action and words failed. Does all this mean that applying military power is always preferable to diplomacy? Hardly. What it does mean is that words alone can never be an effective substitute for military capability and a willingness to use it.

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