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Some Legal Problems Arising out of Foreign Flag Operations

Cover Page Footnote

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SOME LEGAL PROBLEMS ARISING OUT OF FOREIGN FLAG OPERATIONS

LOUIS R. HAROLDS*

I. EFFECTS OF COMPETITION BY FLAG OF CONVENIENCE SHIPS

ABOUT two years ago, the British film industry adroitly called public attention to some of the dangers involved in the growth of "flag of convenience" vessels, as seen through the eyes of many Europeans, particularly those from traditionally maritime nations. In a comedy entitled "All at Sea," Sir Alec Guinness played the part of a seasick captain, faced with the need of supporting himself by utilizing his maritime experience. Finding an old dilapidated pier, which jutted out into the ocean along the seacoast of a small English town, the captain hit upon the idea of converting the pier into an amusement park outfitted as a vessel. The local townsfolk, however, had other ideas. They convened their governing body to take action against the proposed business venture. Employing his ingenuity and training, the captain concluded that if this structure could somehow be registered as a vessel, it would come within the maritime jurisdiction and hence be free from any local restraints which the citizens of the community might invoke.

Warming to this jurisdictional tug-of-war, the captain equipped this property with a wheelhouse facing the ocean and various nautical appliances. He even gave this "craft" a nautical sounding name. Alas, none of the maritime nations to which he had applied would register this "vessel" until the captain finally contacted the representative of Liberama (an ingenious contraction of Liberia and Panama), and here he was able to obtain the necessary documentation and registration speedily, without any inspection or red tape. Had not the ancient pier finally collapsed during an unfortunate "nautical" excursion, the venture might even have fared well, under the attempted establishment of this alleged maritime jurisdiction, as against the claims of the local officials.

The experience of the captain in "All at Sea" may not have influenced the transfers of vessels to or from foreign registry, but whatever the situation, one notes with interest that the "flags of convenience" problem has been the subject of wide discussion in Europe, as in the United States.¹

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1. "The phenomenal growth of merchant fleets registered under the flags of such non-maritime countries as Liberia and Panama began to cause alarm in the traditionally maritime countries. By mid-1956, the active fleets registered under these two flags combined were exceeded only by those of Great Britain and the United States. The ownership of such

Fleets flying "flags of convenience" have continued to increase since 1956 to such an extent that the traditional maritime countries have introduced resolutions at international conferences in an attempt to establish effective measures involving their jurisdiction and control, and in order to establish their bona fides.² The growth of tremendous fleets under the flags of small nations that previously had no status as maritime powers has even become the subject of editorial comment in leading newspapers and periodicals.³

Following the outbreak of war in 1939, Congress passed the Neutrality Act⁴ to avoid involving American flag vessels in incidents which might entangle us in the conflict. Since the Neutrality Act kept American flag shipping away from most north European ports during that period, it soon became expedient to transfer American vessels to foreign flags.⁵

vessels, under what came to be known as 'Flags of Convenience,' was vested in U. S. and Greek companies and citizens of other nationalities. Owners of ships registered in such countries were able to avoid the high rates of taxation applicable in most of the traditional maritime countries, or, in the case of U. S. companies, the handicaps of U. S. shipping legislation. During 1956, for the first time, a significant move among British shipowners was made to transfer their operations to 'tax-free' parts of the commonwealth, such as Bermuda, in an endeavor to place themselves on an economically competitive basis with ships registered in Liberia and Panama." *Britannica Book of the Year, 1957* (Events of 1956), at 493-94. In 1956, U. S. was listed as having 1266 vessels of 1,000 gross tons or over, and Greece was listed as having 215 such ships. On the other hand, Liberia was credited with 570 such vessels, and Panama with 510. *Id.* at 493.

2. By June 30, 1958, the active U. S. merchant fleet of ships of 1,000 gross tons, or more, had decreased to 1,047 vessels; while that of Greece had increased to 263 bottoms; that of Liberia had increased to 965; and that of Panama had increased to 563 vessels. *Britannica Book of the Year, 1959* (Events of 1958), at 426-27.

3. "Panama, Honduras and Liberia are the notable examples of this extraordinary emergence in the field of sea transport. These countries together have some 12,000,000 tons of shipping. On traditional terms, their connections with the ships they shelter is tenuous. A great block of the fleet is owned by United States interests. A big share is controlled by the internationally known Greek titans.

"Maritime unions here have long complained against them, but now the campaign is mounting. Norwegian insurers have applied sanctions by refusing to underwrite insurance on the runaways. In England other sanctions are being discussed.

"All of these critics charge, with some justification, that the system affords the mavericks an unfair advantage. The registry countries cannot apply regulations. The fleets pay little or no taxes." *N. Y. Times*, April 20, 1958, § 4 (Editorial), p. 8, col. 2.

4. Neutrality Act of 1939, ch. 2, 54 Stat. 4.

5. "Much of the publicity on Panamanian and Liberian shipping has been given to a fringe of operators whose methods and attitudes have been open to criticism. To this group of operators, Panama and Liberia might well offer opportunities for the continued operation of the obsolescent vessels which no longer meet the requirements of the underwriters or the various conventions for the safety of life at sea. And the possibilities exist that the crews of such vessels can be exploited by the nonpayment or underpayment of wages, discharge in a foreign port, and the like. The consular service of small nations is

The International Transport Workers Federation became one of the most active opponents of "flags of convenience." This is a world-wide organization with constituent unions in about thirty-three different countries; and from time to time, it considered an international boycott of the so-called "runaway" ships. Meanwhile, the International Labor Organization, with about fifty adhering member countries, decided, in the autumn of 1956, on a draft resolution against Pan-Lib-Hon shipping during the I.L.O. Maritime Conference in Geneva.⁶ In addition, the Organization for European Economic Cooperation (OEEC) in Paris studied the problem, and its eighteen member countries unanimously adopted a report stressing the importance of requiring a "genuine link" between a ship and its flag, with each state to exercise effective control and jurisdiction over its vessels through adequate maritime legislation.⁷

More recently, the International Conference on the Law of Seas, held at Geneva in April 1958 with fifty-nine nations in attendance, followed the suggestion of the International Law Commission of the United Nations and unanimously adopted the principles which had been endorsed by the OEEC.⁸

In 1949, an official inquiry was made of Panamanian labor legislation and of the composition of the Panamanian fleet under the auspices of the International Labor Organization, which is a specialized agency of the U.N.⁹ Thirty Panamanian ships were selected at random for inspection. The findings were critical. Almost half of the Panamanian ships were found to be thirty years old or older. While Panama had signed the international conventions for safety of life at sea, there was little domestic Panamanian legislation providing for the enforcement of the standards. It was reported that what Panamanian labor legislation existed was frequently unknown to masters, who, in any event, could not always read Spanish. Other discouraging details were reported on individual ships in terms of safety standards, nonpayment of wages, shipowners' evasion of responsibility, and crew accommodations.¹⁰ Attention has been called

often limited, and a seaman may encounter difficulty in obtaining redress for his grievances. In fact, in one major Mediterranean port the Liberian consul is also a shipping agent, manning Liberian vessels for the owners' accounts." Carter, *The New Maritime Nations*, 29 J. Bus. 207-08 (1956).

6. *Flags of Convenience*, 14 *Norwegian Shipping News* 514 (1958).

7. *Ibid.*

8. "Thus, the flags of convenience problem is not one which is particular to Norway or the United Kingdom. It is common to all the traditional maritime countries, but naturally causes most concern in those countries where shipping plays the most important part in the economy." *Ibid.*

9. Report of Committee of Enquiry of the International Labor Organization, *Conditions in Ships Flying the Panama Flag* (1950).

10. *Id.* at 28-40.

to the fact that many of these vessels have had their overhaul, repair and maintenance work done in foreign shipyards, where depressed prices and wages prevail, with further advantages gained because neither Liberia nor Panama has a personal or corporate income tax.

At a time when there should generally be improved shipping operations because of anticipated increased trade between the Great Lakes and Europe via the St. Lawrence River, particularly in view of the opening of the seaway in 1959, the industry has found instead a gradual trend away from American flag operation and a shift of ship construction and repairs from American to foreign shipyards.¹¹

Like many other newly-built vessels, the "Universe Leader," the largest tanker in the world (84,700 tons dead weight, with an overall length of 851 feet and a beam of 125 feet), was built in a Japanese shipyard controlled by American interests.¹² More recently, the "Esso Puerto Rico," a tanker of 32,300 dead weight tons, was listed as having been built in Italy.¹³ These are examples of a trend which has had a vital bearing not only on the maritime industry, but also on the continued livelihood of approximately 125,000 persons who were listed by the Bureau of Labor Statistics as employed in American shipyards in July 1958.¹⁴

It was, therefore, perhaps inevitable that maritime unions would engage in a concerted effort to protect the wages and working conditions of American maritime employees from the threat posed by this increased foreign competition; and that some of these labor disputes would end up in the courts.

In *Benz v. Compania Naviera Hidalgo, S.A.*,¹⁵ the Supreme Court upheld a state court's jurisdiction over a suit based on a claim of alleged wrongful picketing of a foreign vessel by an American union, although the labor dispute itself involved only a foreign employer and its foreign crew employed abroad. It was held that the Federal Labor Management Act of 1947¹⁶ did not apply to such a situation since there was no claim that the vessel was actually under the control of American interests.¹⁷

In *Afran Transp. Co. v. National Maritime Union*,¹⁸ the court declined

11. While United States coastal trade is generally reserved to the vessels of United States registry, there are recent statutes authorizing Canadian ships to carry ore and passengers between Great Lakes ports, with limited rights for passenger vessels which engage in Caribbean cruises. See Note, Freedom of the Ports, 28 Temp. L.Q. 230 (1954).

12. Britannica Book of the Year, 1957 (Events of 1956), at 680.

13. Britannica Book of the Year, 1959 (Events of 1958), at 615.

14. 6 Monthly Labor Rev. 690 (1959).

15. 353 U.S. 138 (1957).

16. 61 Stat. 136 (1947), 29 U.S.C. § 141 (1952).

17. 353 U.S. at 138-39.

18. 169 F. Supp. 416 (S.D.N.Y. 1958). See also *Afran Transp. Co. v. National Maritime Union*, 1959 Am. Mar. Cas. 888 (S.D.N.Y. 1959).

to halt picketing by American maritime unions who were alleged to have joined with the International Transport Workers Federation in restraining interstate commerce by picketing twelve Liberian and three Panamanian corporations. On the disputed facts presented, including charges of American control, it was held that the unions might be entitled to show whether this constituted a bona-fide labor dispute within the Norris-LaGuardia Act,¹⁹ or whether the matter came within the jurisdiction of the National Labor Relations Board.²⁰ On the other hand, in *Marine Cooks & Stewards Union v. Panama S.S. Co.*²¹ an injunction against union picketing of a Liberian flag vessel was granted, and it was held that the Norris-LaGuardia Act did not apply. Despite the absence of diversity, the court held that it had jurisdiction²² and distinguished the recent decision in *Romero v. International Terminal Operating Co.*,²³ a seaman's personal injury case which had held that, in the absence of Jones Act²⁴ jurisdiction, diversity was a prerequisite for civil maritime tort suits between aliens.²⁵

Many American ship operators receive governmental subsidies based on the difference between the cost of operating an American ship and the average costs experienced by foreign competitors.²⁶ Similar principles apply to shipyard construction subsidies and to preferential mortgage benefits—all being offered to maintain and improve the American merchant marine, both on the industry and labor levels.²⁷

The very fact that the laws of some nations such as Panama and Liberia have not provided the same detailed regulations for the maintenance and safety of vessels, as do the laws of other countries, creates additional issues which may understandably become matters of legitimate labor concern, sowing the seeds for additional future discord and litigation.

19. 47 Stat. 73 (1932), 29 U.S.C. § 113 (1952).

20. 169 F. Supp. at 423.

21. 1959 Am. Mar. Cas. 892 (9th Cir. 1959).

22. The court claimed jurisdiction under Judicial Code, 28 U.S.C. § 1331 (1952). 1959 Am. Mar. Cas. 892, 900 (9th Cir. 1959).

23. 358 U.S. 354 (1959).

24. 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1952).

25. An attempt is being made to adjust some of these labor problems by legislation. A bill reportedly being favorably recommended by the Senate Labor Subcommittee seeks to apply the federal minimum wage laws to steamship company employees on vessels owned or controlled by United States citizens, though operating under a foreign flag. J. Commerce, July 13, 1959, p. 9, cols. 4-5.

26. 49 Stat. 2001 (1936), as amended, 46 U.S.C. §§ 1171-80, as amended, 46 U.S.C. §§ 1176, 1177(a) (Supp. V, 1958).

27. 49 Stat. 1995 (1936), as amended, 46 U.S.C. §§ 1151-59 (1952), as amended, 46 U.S.C. § 1152(f) (Supp. V, 1958).

II. EFFECTS OF SHIP TRANSFERS TO CONCEALED OWNERS OPERATING UNDER FOREIGN FLAGS

While many may think that the problems involving the transfer of vessels to foreign registry are of recent origin, this problem actually existed previously in this country in connection with World War I shipping. The Shipping Act of 1916²⁸ was an attempt by Congress to foster and encourage the growth of an American merchant marine. One of the methods adopted by Congress was to outlaw illicit transfers of vessels from American to foreign documentation.²⁹ However, the initial enactment soon proved inadequate with the result that it became necessary for Congress to seek an amendment in 1918 setting forth more stringent provisions.³⁰

The Merchant Marine Act of 1936,³¹ and the Merchant Ship Sales Act of 1946³² contain further express recognition by Congress of the need for encouraging the development of a merchant marine owned and operated under the United States flag by American citizens, insofar as it may be practicable, both for national defense purposes and for the development of our foreign and domestic commerce.

Following World War II, the United States Government once again had on its hands an excess of merchant vessels built during the war, while foreign shipping interests again had a scarcity. Section 2 of the Shipping Act of 1916,³³ however, still prohibited the transfer of these vessels to foreign shipping interests, laying down a mandate that substantial United States citizenship be required of prospective purchasers.

However, the experience of World War I was repeated so that a number of alien shipowners soon gained control over many of the vessels sold by our Government under the Ship Sales Act,³⁴ although these sales were made ostensibly only to American corporate purchasers, as required by law. In many of these cases, it was found that "dummy"

28. 39 Stat. 728 (1916), as amended, 46 U.S.C. §§ 1802-42 (1952).

29. Shipping Act of 1916, ch. 451, § 9, 39 Stat. 730.

30. 40 Stat. 900 (1918), as amended, 46 U.S.C. § 802 (1952). A House report stated with reference to the need for the amendment: "As a consequence of this shortage of shipping following World War I there has been during the past two years a systematic determination and resourceful effort on the part of foreign financial interests to buy up and take from under the American flag the vessels of the American merchant marine." H.R. Rep. No. 568, 65th Cong., 2d Sess. 4 (1918).

31. 49 Stat. 1985 (1936), as amended, 46 U.S.C. §§ 1101-1294 (1952), as amended, 46 U.S.C. §§ 1111(b)-1294 (Supp. V, 1958).

32. 60 Stat. 41 (1946), as amended, 50 U.S.C. App. §§ 1735-46 (1952), as amended, 50 U.S.C. App. §§ 1738(b), (f), 1742(c)(2) (Supp. V, 1958).

33. 41 Stat. 1008 (1920), 46 U.S.C. § 802 (1952).

34. 60 Stat. 41 (1946), as amended, 50 U.S.C. App. §§ 1735-46 (1952), as amended, 50 U.S.C. App. §§ 1738(b), (f), 1742(c)(2) (Supp. V, 1958).

corporations were set up, with presidents and directors who were American citizens, and with title to the majority of the voting stock vested in American citizens. These and other degrees of technical compliance were had in order to meet the superficial tests for American ownership delineated by the law.³⁵

When some of these activities by foreign shipowners became known, the Government instituted forfeiture proceedings between 1951-1955, involving approximately 44 large ocean-going vessels, resulting in the re-payment to the Government of approximately \$29,175,000.00.³⁶ As the court observed in *Meacham Corp. v. United States*,³⁷ one of the forfeiture cases: "One has only to be told that the Chinese raised six million dollars and the Americans six dollars in order to conclude, at least tentatively, that the Chinese dominated the enterprise"³⁸

In connection with the transfer by the United States Government of its vessels under the trade-out policy permitted by law, the House Committee on Merchant Marine and Fisheries conducted hearings between March 27 and April 11, 1957.³⁹ Clarence G. Morse, the United States Maritime Administrator and Chairman of the Federal Maritime Board, testified that prior to the sale of a ship, it was government policy to insist that 51% of the stock of the transferee corporation be American-owned, and that a majority of the directors be American citizens.⁴⁰ However, it was revealed that the Government simply relied upon affidavits filed by officers of the companies setting forth the purported percentage of stock ownership, the number of shares issued and outstanding, and the number allegedly held by American citizens generally, without any particular investigation.⁴¹ Mr. Morse also explained at the hearing that the Government had transferred some sixty-nine Liberty vessels to foreign flags on the condition that a second Liberty ship would be retained by the shipping company for American flag operation.⁴² After receiving a great deal

35. Shipping Act of 1916, 41 Stat. 1008 (1920), 46 U.S.C. § 802 (1952).

36. Annual Report of the Attorney General 212, 214. (1955). See also Greene, *Foreign Capital: Friend or Foe of American Shipping?*, 405-06 (1958). Mr. Greene, President of the American Merchant Marine Institute, was former General Counsel of the Federal Maritime Board and Maritime Administration.

37. 207 F.2d 535 (4th Cir. 1953), cert. granted, 347 U.S. 932, writ dismissed per stipulation, 348 U.S. 801 (1954). See also *United States v. Tito Campanella Societa Navigazione*, 217 F.2d 751 (4th Cir. 1954); *United States v. Niarchos*, 125 F. Supp. 214 (D.C.C. 1954); *United States v. Tanker Lake George*, 123 F. Supp. 216 (D.C. Del. 1954), appeal dismissed sub nom. *United States v. The Lake George*, 224 F.2d 117 (3d Cir. 1955).

38. 207 F.2d at 543.

39. Hearings before the House Committee on Merchant Marine and Fisheries, 85th Cong., 1st Sess. 1 (1949).

40. *Id.* at 17.

41. *Ibid.*

42. *Id.* at 7.

of testimony on this subject, Congressman Zelenko issued a statement expressly attacking the abuses connected with the transfer of American ships to foreign registries.⁴³ At further hearings held by the Merchant Marine and Fisheries Subcommittee between April 9 and April 21, 1957,

43. "A transaction of this type is governed by United States statute. It is permitted with companies owned or controlled by American citizens to stimulate shipbuilding in American yards. To enable them to get necessary funds, these companies are allowed to transfer or sell some of their active tankers to foreign-flag registry. This permits them to employ non-American cheap labor and to get certain substantial income-tax profits.

Also, the American companies get certain other benefits from the building of the new ships because they can obtain a 100-percent United States-guaranteed mortgage.

This is how [X] . . . [the shipping interest named by Congressman Zelenko is designated herein as X] did it:

Mr. [X] . . . among other assets, owned 12 tankers and 2 Liberty ships. He is not an American citizen

The other side of the deal, in which he supposedly relinquishes title to the 12 tankers and 2 Liberty ships, provides that these vessels now under American flag be sold or turned over to his own foreign-flag companies.

By means of some high-power bookkeeping, these ships are being sold for about \$13 million. They are worth about \$50 million in the world market today.

[X] . . . is transferring, or has already transferred, most of these vessels. The ships to be built may be completed in 3 years.

These appear to be the results of the deal if permitted to proceed: 567 American seamen lose their jobs on the 14 ships. They are replaced by foreign seamen working at less than 50 percent of American wages.

The new ships, if completed, will employ only 170 Americans, but not before 3 years from now.

There is no present gain in American shipyard employment because the yards now have all the work they can handle for about 3 or 4 years.

The United States loses income taxes from the wages of the American seamen put out of work.

The United States loses substantial tax returns from the operation of the transferred vessels.

[X] . . . transfers the 14 ships now for a depreciated value of about \$13 million, allowing one of his companies to write off millions in depreciation in tax deductions while his other companies, to which the ships are being turned over, can sell the same vessels at this moment for over \$50 million, practically all clear profit under capital gains taxation after a short period of time—if, in fact, any tax will have to be paid to the United States at all.

[X] . . . can now operate these ships at one-third the cost under foreign flags as against his American-flag operation.

Not even a bond has been required of [X] . . . for the fulfillment of the contract. All the United States gets in the event of a default is a damage claim limited to \$8 million—if and when it can ever collect.

It appears, therefore, that under this porous and collapsible trust agreement the [X] . . . interest has attempted to confer American citizenship upon itself in order to build \$50 million worth of ships with United States Government guaranteed funds; to obtain a tax and property windfall of another \$50 million worth of American vessels—adding up to a largesse of \$100 million to [X] . . .—while 570 American seamen are put out of work. . . ."
Id. at 211-12.

testimony given by C. S. Teitsworth, vice-president and director of Socony Mobil Oil Company, revealed that his firm operated tankers through American and foreign registry and had used foreign corporate subsidiaries.⁴⁴ When the chairman of the Sub-committee asked Mr. Teitsworth who could be sued in the event that one of his Panamanian flag tankers exploded while temporarily alongside an American dock, causing deaths, personal injuries, and property damage, the suggestion was proffered that the parent concern would probably accept responsibility, although it was recognized that the issue might have to be litigated in the courts for many years.⁴⁵ Also raised was the question whether the United States Government might become involved if one of the Panamanian flag ships were to find itself in diplomatic trouble while in foreign waters.⁴⁶ No definitive solutions to these problems were found.⁴⁷

An interesting case illustrating the manner in which foreign operators often "scramble" their ownership is *Markakis v. Mparmpa Christos*.⁴⁸ Here a Greek seaman was injured on a Liberian flag ship, owned by a Panamanian corporation, while the vessel was in Virginia waters. The Liberian flag was a "flag of convenience," just as the Panamanian corporation was a "corporation of convenience." The vessel was actually operated by a London corporation which was controlled by a Greek family. The court applied the law of the flag, which afforded a complete remedy. In addition to a good judicial discussion of the conflict of laws and matters of international comity and policy involved in the problem, this is the first case to hold that under Liberian law there is a right of recovery based on negligence, as well as on unseaworthiness.⁴⁹

44. Hearings on S. 1488 Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 85th Cong., 1st Sess. 6-7 (1957).

45. *Id.* at 46.

46. *Id.* at 53.

47. As Greene noted: "Transfer of registry and documentation is a matter of record fact as to the occurrence of which there can be no question or dispute. It is also an act which is subject to easy and effective control by the sovereignty under the laws of which the ship is documented. But the shift in corporate control or the initial creation of non-citizen control over an American shipowning corporation can be, and in the multi-million dollar 'citizenship' cases' certainly was engulfed in a miasma of doubt, uncertainty and controversy. There are few fields of the law so treacherous either for the private practitioner or the government lawyer as the prediction of whom a government agency or the courts may find to be able to exercise a de facto control, directly or indirectly over a corporate entity." Greene, *supra* note 36, at 412-13.

48. 161 F. Supp. 487 (S.D.N.Y. 1958).

49. On the other hand, in *Konstantopoulos v. Diamante Cia. De Vapores, S.A.*, 170 F. Supp. 662 (S.D.N.Y. 1959), another judge indicated, in a somewhat similar case, that Liberian law gives a remedy for damages for personal injuries caused by unseaworthiness, but not for personal injuries due to negligence. However, this was dicta, since the judge

It was likewise held in *Rodriguez v. Gerontas Co.*⁵⁰ that Panamanian law entitled a seaman to recover damages for personal injuries caused by unseaworthiness, as well as by reason of negligence; and, as under our law, if a seaman is paid compensation benefits under the Panamanian labor law, the amount may be deducted from the damages awarded.

These cases may be compared with *Bartholomew v. Universe Tankships, Inc.*,⁵¹ which involved a factual situation in many respects similar to that in the *Markakis*⁵² case. Here the law of the flag was not applied, for the court ruled that there was sufficient evidence of American control of the foreign corporation to warrant submission of the case to the jury under the Jones Act,⁵³ which was certainly preferable, at least from the injured man's point of view.

It seems true that for some purposes a foreign flag vessel owned by an American corporation is perhaps not deemed an American vessel. However, a foreign flag vessel, controlled by American interests, is considered an American vessel in order to carry out the purpose of the Jones Act; and in such a personal injury case, one may examine the defendant's books and records to establish the vessel's true beneficial ownership and control.⁵⁴

Many of the foreign flag personal injury cases involve questions concerning the presence of the foreign shipowner within the jurisdiction of the local courts so as to be amenable to suit. *Federazione Italiana dei Consorzi Agrari v. Mandask Compania de Vapores, S.A.*⁵⁵ demonstrates how alien corporations operating foreign flag ships have the power to present facts to either admit their corporate presence within the jurisdiction of the court, or to deny same, depending on what seems to best serve their interests at the moment. The court in *Monteiro v. San Nicolas, S.A.*⁵⁶ reiterated that issues concerning the presence and bona fides of non-resident foreign flag ship operators often present questions

actually found that there was neither negligence nor unseaworthiness, and there was no extended discussion of the foreign statutes involved.

50. 150 F. Supp. 715 (S.D.N.Y. 1957), aff'd, 256 F.2d 582 (2d Cir. 1958).

51. 263 F.2d 437 (2d Cir. 1959).

52. *Markakis v. Mparmpa Christos*, 161 F. Supp. 487 (S.D.N.Y. 1958). See p. 303.

53. 41 Stat. 1001 (1920), 46 U.S.C. § 688 (1952).

54. See, e.g., *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (2d Cir. 1959); *Carroll v. United States*, 133 F.2d 690 (2d Cir. 1943); *Gerradin v. United Fruit Co.*, 60 F.2d 927 (2d Cir. 1932), cert. denied, 287 U.S. 642 (1932); *Markakis v. Mparmpa Christos*, 161 F. Supp. 487 (S.D.N.Y. 1958); *Zielinski v. Empresa Hondurena de Vapores*, 113 F. Supp. 93 (S.D.N.Y. 1953); *Torgersen v. Hutton*, 267 N.Y. 535, 196 N.E. 566 (1935).

55. 158 F. Supp. 107 (S.D.N.Y. 1957). The case also indicates that information a plaintiff's attorney might look for in trying to obtain jurisdiction over such a ship operator if the latter contests his amenability to the service of process.

56. 254 F.2d 514 (2d Cir. 1958).

of fact which may require a trial and therefore should not be determined merely on the basis of motions to dismiss which are so frequently made by such shipowners. It is perhaps pertinent, therefore, to note this language from *Armit v. Loveland*:⁵⁷

If the defendants so scrambled their relations as to render it difficult for anyone to say for a certainty whether the plaintiff was employed by only one or by all of them that should not serve to defeat the plaintiff's right by relieving a responsible defendant. To hold otherwise would be to put a premium upon the confusion which the defendants themselves created. The ones responsible for it should be the ones to dispel it [W]e can see no legal necessity for requiring the plaintiff to grope around in search of his employer's identity among the corporate entities and individuals, all of whom are shoots off the same stock and engaged in a common activity.⁵⁸

III. CONGRESSIONAL POLICY OF EQUALIZING OPERATING COSTS OF COMPETING FOREIGN FLAG VESSELS

Congressional concern with the need for equalizing foreign flag operations with American flag operations, as a means of protecting our merchant marine, was not confined only to the subject of ship acquisition and disposal. An examination of the *Congressional Record* discloses that our lawmakers were desirous of equalizing the work and safety conditions of alien and American seamen, and also provided industry with substantial subsidies to encourage ship construction in American shipyards and the operation of ships under American standards.

Among the provisions benefiting maritime labor was the liberal negligence statute now known as the Jones Act⁵⁹ which gave "any seaman" the right of trial by jury in the event of personal injury, thus eliminating some of the harsh common law defenses. The intent and purpose of the Jones Act (the 1920 amendment) were the same as that which had previously motivated Senator La Follette's Seamen's Act of 1915,⁶⁰ for the original Act was also intended to promote a larger and more efficient American merchant marine. Nevertheless, that Act found it necessary,

57. 115 F.2d 308, 314 (3d Cir. 1940).

58. *Id.* at 314. As Judge Augustus Hand, speaking for a unanimous court in *Gerrardin v. United Fruit Co.*, supra note 54, at 929, asserted: "[I]t seems but a slight disregard of the symbol of foreign registry to apply an ordinary rule of torts to a shipowner who bears such an illusionary shield."

59. 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1952), was enacted by Congress on June 5, 1920, as an amendment offered by Senator Jones of Washington to the Seaman's Act of 1915, ch. 153, § 20, 38 Stat. 1185. At the same time Senator Jones introduced, and Congress passed, many other amendments affecting our merchant marine which are presently found in Title 46 of the United States Code. All of these amendments were put in one group, and the heading of this omnibus bill stated broadly that it was intended "to provide for the promotion and maintenance of the American Merchant Marine." H.R. 10378, 66th Cong., 2d Sess. (1920).

60. Ch. 153, § 20, 38 Stat. 1185.

in order to achieve its objective, to deal even with foreign seamen employed on foreign vessels, at least while those vessels were in American ports.

In explaining why it was necessary for the La Follette Act to deal with *foreign* seamen employed aboard *foreign* vessels, the House Committee on Merchant Marine, with the concurrence of the Secretaries of Commerce and Labor, had stated in approving the proposed legislation that an equalization of operating expenses was essential to the building up of a merchant marine.⁶¹ Therefore, the Committee maintained:

This bill will tend to equalize the operating expenses. Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States. Hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest; but it is proposed by this bill to give the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage. *That will equalize the cost of operation so that vessels of the United States will not be placed at a disadvantage.*⁶²

It can thus be seen that one of the factors which persuaded Congress to pass the Seamen's Act of 1915 was its tendency to equalize the cost of operating foreign vessels with that of American bottoms, so that no undue advantage would be had by foreign steamship operators in competing for trade with American shipowners.

Senator Jones' amendment⁶³ to the 1915 Act was first introduced in the Senate on May 4, 1920.⁶⁴ Section 688 of this amendment was read, and its form and content were agreed to by the Senate on May 14, 1920.⁶⁵ Since there appears to have been no discussion on this particular section, it becomes important to note what was said and done *immediately prior* to the Senate's taking action thereon, and to review certain statements made by various Senators on the days preceding its adoption.

During a discussion of another section of the Jones Act, Senator King of Utah remarked on May 11, 1920, three days before the Senate adopted section 688, that he was opposed to any measure that would work an injustice against aliens or those carrying on commerce under an alien flag.⁶⁶

61. H.R. Rep. No. 645, 62nd Cong., 2d Sess. 7 (1915).

62. *Ibid.* (Emphasis added.)

63. See note 59 *supra*.

64. 59 Cong. Rec. 6494 (1920).

65. *Id.* at 7044. See also *supra* note 59 and accompanying text.

66. "I am in entire sympathy with the purposes of the Senator. It is important that we should have a broad and comprehensive act dealing with this very important subject, one so vital to American interests and to the commercial prosperity and development of

On the other hand, Senator Underwood of Kentucky argued in favor of preferential treatment for American shipping in order to offset the threat of foreign competition.⁶⁷

While speaking on another section of the bill which would affect foreign vessels in American ports, Senator Jones, on May 13, 1920, expressly recognized the right of each nation to have its own laws applied to foreign vessels temporarily in its ports:

This does not pretend, either, to affect those vessels in the ports of a foreign country. *The matter would be governed there by the laws of the country.* If a vessel is disabled, for instance, in Liverpool, the matter of the repairman's lien or claim will depend upon the laws of England, and it will not be affected at all by this bill. If the vessel has to be repaired and the law of England gives a repairman a claim superior to the mortgage, he can enforce it.⁶⁸

Subsequently, in the discussion of an amendment to the law regulating the payment of half wages in American ports held the same day that section 688 was adopted, Senator Jones asserted that the purpose of the amendment was "*to bring the foreign seamen up to a level with our own seamen by giving them the remedy here in our own ports that our seamen have.*"⁶⁹ He maintained, in a dialogue with Senator King of Utah, that the

our country; but no matter how important a measure may be, we cannot afford to incorporate within it provisions that may do an injustice, even to aliens, or those who may be carrying commerce under an alien flag.

I think I would be as punctilious in preserving the rights of a foreigner where there are dealings between nations, as there must be, as I would be in preserving the rights of Americans. That is to say, I would afford a full and fair opportunity for a foreigner to have his rights determined, and I would not act in a summary way in dealing with foreigners any more than I would act in a summary way in dealing with the rights of American citizens." Id. at 6859-60.

67. "However, it is clear Mr. President, that if we do not discriminate in favor of American shipping, although we have built the greatest fleet this country has ever known, the day is not far distant when that fleet must anchor in the harbors of the United States and remain there because of the competition of foreign shipping manned by seamen who sail the ships at very much less wages than those for which American seamen can be employed. More than that, almost every great nation of the world with whom we must compete to-day, is paying subsidies or granting subventions to its own merchant marine. . . . [T]he American ship has been driven off the seas because the conditions of competition have been such that we could not meet them." Id. at 6867.

Senator Edge, also speaking on May 11, 1920, read from the committee report which stated: "The competition in world trade will be with privately owned foreign ships, and to meet such competition our ships must be similarly operated." Id. at 6987.

68. 59 Cong. Rec. 6994 (1920). (Emphasis added.)

69. Id. at 7036-37 (Emphasis added.) "The purpose of this amendment is to carry out the real, original intention, that whenever a seaman can make such a demand he can demand half of what is then due and remaining unpaid. That is the main provision. It is very earnestly desired by the seamen, and there is no serious objection on the part of those who operate ships. As a matter of fact, the provision is designed to meet this situation with reference to foreign seamen. They make a contract in a foreign country for a voyage some-

United States had jurisdiction over foreign seamen and ships in American ports under the Seamen's Act of 1915.⁷⁰

On the same day, May 14th, there was read an amendment which in broad terms made unlawful the payment of advance wages to "any seaman."⁷¹ While this section, as read to the Senate, made no express mention of foreign seamen employed on foreign ships, Senator Jones, in response to a question, explained that its purpose was to accord to foreign sailors in American ports the rights already enjoyed by American seamen.⁷²

Thereafter, the very next amendment of the Committee on Commerce which was read and agreed to was an amendment relating to the qualifications of certain able-bodied seamen who were *citizens* of the United States.⁷³ *Immediately following* this action, the amendment now known as section 688⁷⁴ was read and adopted, extending to "*any seaman*" who had been injured on his vessel the same benefits as were enjoyed by railway employees.⁷⁵

times extending over three years, but under the decision referred to they cannot draw on that whole voyage any more than one-half of the entire wages agreed to be paid for the voyage; in other words, the operators hold half the wages and force the sailor to go back to his home port. This provision is to enable a seaman on a foreign ship who desires to land in this country to have one-half of the wages that are remaining unpaid to him." *Ibid.*

70. 59 Cong. Rec. 7037 (1920). The exchange was as follows: "Mr. King. Does the Senator say that the Supreme Court has held that we have jurisdiction over the foreign seamen and foreign ships?"

Mr. Jones of Washington. Under the present statute we have such jurisdiction in our ports. The Supreme Court held that act to be constitutional only a short time ago.

Mr. King. A vessel, then, that sails under the Norwegian flag, for instance, with Norwegian sailors, if it touched at an American port for a day would become subject to the jurisdiction of our courts and the provisions of this proposed law, and the sailors could invoke the law for their protection?

Mr. Jones of Washington. Yes; while in an American port. It was one of the main contentions, the Senator from Utah will remember, in favor of the seamen's act, that it would, instead of placing a great burden on our seamen and shippers, bring the wages of the seamen of other countries up to a level with our own. This provision is intended to aid in carrying out that great purpose." *Ibid.*

71. The amendment is now found in 41 Stat. 1107 (1920), 46 U.S.C. § 599 (1952).

72. "The Supreme Court has upheld this section and has also upheld the right of Congress to deal with foreign seamen in our ports. The purpose of the provision is to prevent what is called a 'crimping' in the securing of seamen. For instance, we prevent by our law advances being made to seamen and sailors in this country. This was simply to prevent the boarding houses or the crimping houses from taking advantage of seamen, as the Senator understands. The purpose of this section is to prevent that as to sailors on ships coming from a foreign port to this country. It is a very common custom in many other countries to require advance payments on wages when seamen ship. Under this provision that practice will be stopped." 59 Cong. Rec. 7043 (1920).

73. 59 Cong. Rec. 7044 (1920).

74. See note 59 *supra*.

75. 41 Stat. 1007 (1920), 46 U.S.C. § 668 (1952). (Emphasis added.)

Thus, with the explanation still fresh in their minds (a) that Congress could adopt legislation for foreign seamen employed on foreign vessels while in American ports; (b) that for the maintenance and preservation of a proper American merchant marine it was desirable to have operating expenses equalized and foreign seamen placed on an equal plane with American seamen as to the former's right to quit, to receive half wages, to have advance payments of wages declared unlawful as to them, and to have recourse to American courts, the Senate, in passing section 688 in broad terms, agreed to extend the benefits of the Railway Act⁷⁶ to "any seaman" who was injured during his employment, while at the same time it showed that it had in mind the distinction between "any seaman" (section 688), and "any American citizen rated as an able seaman" in dealing with other proposed legislation.⁷⁷

If, under the circumstances, and in view of the discussion preceding the reading and adoption of section 688, it was intended that the section should be limited solely to seamen enjoying American citizenship, it is fair to conclude that appropriate language to this effect would have been employed. It is submitted that the conclusion is irresistible that Congress *purposely* phrased section 688 in broad terms so as to make it applicable to foreign seamen injured aboard foreign vessels in our ports.

IV. DECISIONAL LAW AND THE JONES ACT

Following the adoption of the Jones Act, the first case to raise a substantial question as to its applicability to an alien seaman was *Stewart v. Pacific Steam Nav. Co.*,⁷⁸ which involved a British seaman injured on a British vessel in the Panama Canal. The defendant company had a place of business in New York. Judge Learned Hand ruled that the Jones Act was applicable since, as he asserted, it was a matter of common knowledge that Congress intended the Act to apply to alien, as well as American, seamen for the ultimate better protection of the latter.⁷⁹

Following a series of conflicting decisions in the lower courts, the Supreme Court held in *Uravic v. F. Jarka Co.*,⁸⁰ that the liberal language of the Jones Act, making it applicable to "any seaman," indicated a congressional intent that the Act be available as a remedy not only for seamen in the restricted sense, but also for longshoremen performing the historic work of seamen, though the injury may occur on a foreign flag vessel temporarily in an American port.⁸¹ Thereafter, the nationality

76. Employers' Liability Act, 35 Stat. 65 (1908), 45 U.S.C. §§ 51-60 (1952).

77. 59 Cong. Rec. 7044 (1920).

78. 3 F.2d 329 (S.D.N.Y. 1924).

79. *Ibid.*

80. 282 U.S. 234 (1931).

81. *Id.* at 238-39. This case arose prior to the adoption of the Longshoremen & Harber-

of the injured seaman was also held immaterial as the Jones Act was equally applied to citizens and non-citizens.⁸² As was stated by the court in *Arthur v. Compagnie Gen. Transatlantique*:⁸³

Congress intended that an injured seamen should have a convenient forum in the U.S. in which to assert his rights and not be forced to bring his action against an alien corporation in a foreign country. . . . [T]he right of action is given to all seamen regardless of nationality.⁸⁴

However, conflicting decisions arose which held that the Jones Act did not apply to alien seamen injured on foreign flag vessels. Generally, there was no indication here that serious and careful consideration had been given to the statute's legislative history, or that a chronological, detailed examination of the *Congressional Record* had been made. Perhaps typical of the type of case which led the trend away from applicability of the Jones Act to foreign flag situations was *Sonnesen v. Panama Transp. Co.*,⁸⁵ where a Danish seaman was signed on in New York for a round trip on a Panamanian flag vessel. The complaint alleged the vessel was owned and operated by a Panamanian corporation, the defendant, an allegation admitted by the latter's answer. Since the accident occurred on the high seas, the Jones Act was held not to apply, although the ship was on a time charter to the United States Navy, because this was a situation in which the foreign corporation operated and controlled the vessel.⁸⁶

In the *Sonnesen* case, the vessel had been transferred to a foreign subsidiary corporation in order to circumvent the United States Neutrality Act; yet, this does not seem to have been brought out as an important factor in the case. Neither did the New York Court of Appeals consider the fact that the Panamanian corporation was a wholly-owned subsidiary of Standard Oil Company of New Jersey, which should have made the Jones Act applicable, at least under the rule enunciated earlier in *Gerradin v. United Fruit Co.*⁸⁷

The *Sonnesen* decision may be compared perhaps with *Jorgensen v.*

workers Compensation Act, 44 Stat. 1424 (1927), as amended, 33 U.S.C. §§ 901-50 (1952), as amended 33 U.S.C. §§ 906, 908(c)(1)-(12), (g), 909(e), 914(m), 918, 939(c), 944(a), (c)(1) (Supp. V, 1958), which substituted a compensation scheme for longshoremen, but did not eliminate their right to file a third-party suit for damages.

82. See, e.g., *Kyriakos v. Goulandris*, 151 F.2d 132 (2d Cir. 1945); *Gambera v. Bergoty*, 132 F.2d 414 (2d Cir. 1942), cert. denied, 319 U.S. 742 (1943).

83. 72 F.2d 662 (5th Cir. 1934).

84. *Id.* at 664. See also *Taylor v. Atlantic Maritime Co.*, 179 F.2d 597 (2d Cir. 1950), cert. denied, 341 U.S. 915 (1951).

85. 298 N.Y. 262, 82 N.E.2d 569 (1948), cert. denied, 337 U.S. 919 (1949).

86. *Id.* at 267, 82 N.E.2d at 570.

87. 60 F.2d 1927 (2d Cir.), cert. denied, 287 U.S. 642 (1932). See also notes 51, 54 and 58 *supra* and accompanying text.

Standard Oil Co.,⁸⁸ where the defendant also transferred one of its vessels to the Panamanian flag and to a Panamanian subsidiary corporation in order to avoid compliance with the Neutrality Act. An award for wage damages in favor of the crew, based largely on the contention that this was hardly a bona fide transfer, was upheld in all the courts. It was shown that the Standard Oil Company had voting control over its subsidiary, Panama Transport Company, and was operating many of its tankers under the flags of various nations, a practice still in force today.

The view denying the applicability of the Jones Act to situations such as found in the *Sonnesen* case was given added impetus by the decision in *Lauritzen v. Larsen*,⁸⁹ where the Court stated:

But we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not on our waters.⁹⁰

This language of the Supreme Court, nonetheless, still left the hope that the Jones Act might be applied to accidents occurring on foreign flag vessels within American territorial waters or harbors, because it is established law that foreign flag vessels in local ports, or within territorial waters under the three nautical mile limit, are generally regarded as subject to local jurisdiction for many purposes, including marine traffic safety, customs, water pollution, shipboard incidents which may affect the peace or tranquility of the port, illegal traffic, and other matters of public policy.⁹¹ Our courts, as a matter of comity, generally leave to the authorities of the flag state those matters involving internal discipline of the vessel.⁹²

Partial attempts by Congress to regulate salaries of foreign crews with reference to the right to draw half wages while in certain American ports, the outlawing of advance wage payments to mariners, and other legislation intended to improve the working conditions of foreign seamen, have been acknowledged as valid, the courts having recognized that all these abet the congressional effort to equalize working conditions between American and foreign seamen in order to combat cheaper foreign competition.⁹³

However, with the recent decision in *Romero v. International Terminal*

88. 1940 Am. Mar. Cas. 1169 (N.Y. Munic. Ct. 1940), aff'd, 262 App. Div. 999, 30 N.Y.S.2d 819, motion for leave to appeal denied, 203 App. Div. 708, 31 N.Y.S. 667 (1st Dep't 1941), cert. denied, 315 U.S. 819 (1942).

89. 345 U.S. 571 (1953).

90. Id. at 593.

91. Oppenheim, International Law § 185 (8th ed. Lauterpacht 1955). See also *Cunard S.S. Co. v. Mellon*, 262 U.S. 100 (1923).

92. *Wildenhus' Case*, 120 U.S. 1 (1887).

93. See, e.g., *Patterson v. Bark Eudora*, 190 U.S. 169 (1903).

Operating Co.,⁹⁴ a divided Supreme Court has now ruled that the Jones Act is inapplicable to foreign seamen injured on foreign flag vessels even while the ship is temporarily in an American port. Of course this decision does not affect those cases which have held that the Jones Act may be applied to foreign flag vessels, such as those flying flags of convenience, where substantial control is vested in American interests.⁹⁵ It also leaves untouched maritime torts involving foreign flag vessels which are based on the general maritime law which is not the law of any particular nation, but part of the law of nations. As Mr. Justice Jackson stated in *Lauritzen v. Larsen*:⁹⁶

[C]ourts of this and other commercial nations have generally deferred to non-national or international law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from adjudication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.⁹⁷

It has, therefore, been long established that our admiralty courts may take jurisdiction of suits by alien seamen suing foreign flag operators when necessary to effectuate justice, even where the shipping articles signed abroad have provided that the seaman may seek redress only in the country of the ship's registry.⁹⁸

In *Carbon Black Export, Inc. v. The S.S. Monrosa*,⁹⁹ the Second Circuit Court of Appeals again enunciated the rule (occasionally overlooked by lower courts) that in an in rem admiralty suit against a foreign flag ship, the choice of forum selected by the libellant should rarely be disturbed unless the respondent is in a position to show "strong" reasons to justify a transfer to another forum.¹⁰⁰

Whereas in another recent case, *Hansen v. Endborg*,¹⁰¹ the Jones Act

94. 358 U.S. 354 (1959).

95. See, e.g., *Carroll v. United States*, 133 F.2d 690 (2d Cir. 1943); *Armit v. Loveland*, 115 F.2d 308 (3d Cir. 1940); *Gerradin v. United Fruit Co.*, 60 F.2d 1927 (2d Cir.), cert. denied, 287 U.S. 642 (1932); *Kyriakos v. Polemis*, 63 F. Supp. 19 (S.D.N.Y.), aff'd sub nom. *Kyriakos v. Goulandris*, 151 F.2d 132 (2d Cir. 1945); *Torgersen v. Hutton*, 267 N.Y. 535, 196 N.E. 566 (1935).

96. 345 U.S. 571 (1953).

97. *Id.* at 581-82.

98. See, e.g., *The Titanic*, 233 U.S. 718 (1914); *The Kensington*, 183 U.S. 263 (1902); *Knott v. Botany Mills*, 179 U.S. 263 (1900); *The Belgenland*, 114 U.S. 355 (1885); *Fletoro v. Arias*, 206 F.2d 267 (4th Cir.), cert. denied, 346 U.S. 897 (1953); *The Eros*, 241 Fed. 186, 191 (E.D.N.Y. 1916), aff'd, 251 Fed. 45 (2d Cir.), cert. denied, 247 U.S. 509 (1918).

99. 254 F.2d 297 (5th Cir.), cert. granted, 358 U.S. 809 (1958), writ of cert. dismissed, 359 U.S. 180 (1959).

100. *Id.* at 301.

101. 155 F. Supp. 387 (S.D.N.Y. 1957).

was held inapplicable to an accident aboard a foreign flag vessel in an American port where both the alien seaman and the shipowner were citizens of the same foreign country, the court, however, expressly recognized that there are instances in which our courts may provide alien seamen injured in American ports with a remedy under general maritime law, and may even apply the Jones Act to such torts when "special circumstances" exist.¹⁰² It will be interesting to observe the nature of these "special circumstances" as developed by our courts.

CONCLUSION

The legal problems arising out of foreign flag operations, as has been demonstrated, are pervaded with principles of public and private international and maritime law, world trade, and even matters of political and diplomatic policy. In order to evaluate appropriate methods of regulating the fair operation of such vessels, interested parties must consider that, in many instances, the true owners of such bottoms may be world financiers who perhaps should hardly be treated on the same level as citizens whose activities, interests, and allegiance rest solely with one particular nation.

The practicalities of dealing with competition and other problems raised by the international trade activities of some of these shipowners would seem to render almost provincial and naive the present practice of permitting them to select the country under whose banner they desire to sail, and thus letting them set their own standard of liability for wrongdoing. As it is, the charge has often been made, rightly or wrongly, that many of these so-called giants of industry and commerce allegedly wield such influence in various governmental circles, and with some foreign consular offices, that at times, the individual litigant may well feel at a loss to engage in legal battle against what often seems to present insuperable obstacles.

A suggestion for coping with problems of this nature, as made by the Oslo Shipowners Association on February 7, 1958, is perhaps pertinent:

The large amount of tonnage under tax-free flags of convenience is in a special position which creates problems above and beyond the usual business ones. This is because there is no real connection between the countries which provide flags of convenience and the ships and owners which use the flags—it is purely a matter of form. These countries have no effective jurisdiction over the ships. They have no developed mercantile legal system, no rational recruitment of their own seamen, no officer training institutions and no effective ship control. Because the shipping registered under their flags does not pay tax, the countries are unable to make any reasonable contribution to the defence of Western civilization and the freedom of the seas. In these uncertain times, when preparedness is essential, large merchant fleets sailing

102. *Id.* at 389.

under the flags of countries outside the general control constitute an element of uncertainty which must not be underestimated.

It was unanimously agreed at the meeting that all shipping interests—owners, seamen, brokers, charterers and insurers—must cooperate in the solution of the problems which have been created by these ships registered under flags of convenience. The main problems, however, are of such a character and so far-reaching that they would appear to be soluble only at government level—national or international.¹⁰³

The delicate and competing factors which influence matters of comity in international affairs, however, should give way to the needs and requirements of our own nation, particularly as expressed in our statutes and in the considerations which impressed Congress as imperative. Underlying the various federal enactments to which reference has been made herein is one consistent view: that the American merchant marine should be strengthened and safeguarded, and that one of the means to achieve this objective is to equalize the operating costs of foreign flag ships competing for trade in our ports.

The American taxpayer has been spending huge sums for this purpose in the form of various government subsidies to shipowners, but there is some question as to whether he has been receiving his money's worth. We have seen that ships intended for American operation and meant to create employment for our maritime workmen have somehow found their way into other hands, and consequently, employment has been provided instead for aliens at lower wages and under poorer working conditions. Instead of equalizing the operating costs of foreign vessels by imposing the applicable provisions of our maritime law, as supplemented by the Jones Act, the American courts have, instead, often held that the foreign ship was not amenable to suit here, have declined jurisdiction in some cases, or held the Jones Act inapplicable in others. At this rate, foreign flag ships can continue to underbid American bottoms in competition for world trade.

The following tentative recommendations are suggested:

- 1) The practical difficulties inherent in obtaining effective and unanimous agreement between the various nations involved in such trade activities makes it advisable that substantive solutions continue to be sought in our own courts, and, where necessary, by Congress.

- 2) With regard to those problems, our courts should be urged to give greater weight to the need for carrying out our own national aspirations and objectives. In applying these considerations, the courts might be in a better position to determine the applicability not only of the laws of the flag, but also of the corporate owner in whose name the ship is registered, and of the country whose citizens have a substantial link with

103. 14 Norwegian Shipping News 140 (1958).

the vessel, whether through trade relations, or some other method of control, such as beneficial or stock interest. In this regard, it may be valid to urge further reconsideration of the applicability of such legislation as the Jones Act to foreign flag vessels.

3) Unless the courts adopt a more liberal policy with regard to the amenability of foreign flag shipowners to service in our courts and the question whether jurisdiction should be accepted or declined in such cases, it may become necessary to request that Congress consider the advisability of enacting federal legislation making foreign vessels subject to suit in any American port they may enter by rendering their use of the port an automatic acceptance of the jurisdiction of the courts of the port.¹⁰⁴

Perhaps through consideration of these suggestions, more effective means may be found to carry out our congressional policy of safeguarding and improving the American merchant marine from the point of view of industry and labor, and at the same time give recognition to rights, remedies, and the promotion of bona fide commercial maritime trade practices.

104. In Pennsylvania, a bill known as S. 187 is presently pending to accomplish this result on a state level as to vessels entering the ports located in that state. This provision is similar to that found in the motor vehicle statutes of various states, under which motorists are automatically deemed to designate a state official as having the authority to accept service of suit on their behalf for vehicular accidents within the state, merely by undertaking to drive on the roads of that state.