National Shipping Policies and International Ocean Governance

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The spokesman for the Group of 77, recalling the statement made by the President of the Ivory Coast that the path to economic liberation passed across the sea, said that, for the third world, the question of shipping was not just one aspect of general economic life, as it was in many developed countries; it was one of the basic foundations ... He went on to say that while developing country exports accounted for 61 per cent of world seaborne cargo, the developing countries owned only 8 per cent of world tonnage.¹

Thus, in the late 1970s, the question of shipping was seen as critical to the aspirations of the developing countries that made up the Group of 77.

As an ardent supporter of the Group of 77, Elisabeth Mann Borgese's work on ocean governance reflected two primary beliefs relevant to shipping. One was the right of the nation state to ensure the quality of shipping that took place within its territorial waters, and she was a strong advocate of port state control as a means of ensuring that (a) the environmental costs of shipping did not fall on port states, and (b) seafarers were protected by relevant International Labour Organization and International Maritime Organization conventions. The second belief was that the nation state should be able to share in the benefits of shipping, and that those benefits should not just accrue to the developed world countries that owned shipping.

Two essays in this section address her interests in port state control and seafarer protection; therefore, this essay explores the second of her beliefs.

¹ United Nations Conference on Trade and Development (UNCTAD) (1981), Proceedings of the United Nations Conference on Trade and Development, Fifth Session, Manila, 7 May–3 June 1979, Volume i, paras. 195–196.
in a modern context. It begins by identifying the current state of beneficial ownership of shipping, flag of registration and location of shipbuilding activity, raising questions about where the true value of shipping resides: Is it with the beneficial owners of vessels (as she thought) or is it found in other parts of the industry, for example, by serving the trading interests of the countries involved? There is a common assumption that it is the former, and this essay challenges that assumption. It examines what developing countries can do, in terms of shipping policies, to ensure that the benefits and costs of this most global of international businesses are equitably distributed and that developing countries have the opportunity to acquire some of those benefits. It then provides a checklist of shipping policies for nation states to review in their efforts to increase their participation in the benefits of shipping before closing with some thoughts on the future of developing country shipping policies.

Beneficial Ownership and the Value of Shipping to Nation States

According to the United Nations Conference on Trade and Development (UNCTAD), as of January 2017, the top five ship-owning nation states (in terms of deadweight tonnage [dwt]) were Greece, Japan, China, Germany, and Singapore; these five countries beneficially owned half (49.5 percent) of the world's tonnage. Most important, the UNCTAD data demonstrate that more than 50 years after the founding of the Group of 77, developed countries continue to own the majority of vessels; developing country participation in owning vessels still does not reflect their share of the population as Elisabeth had hoped.

On the other hand, the top five countries for vessel registration at the beginning of 2017 were Panama, Liberia, the Marshall Islands, Hong Kong (China), and Singapore, flagging 57.8 percent of the world's dwt. Developing countries play a significant role in vessel registration, flagging 76.2 percent of the ships registered in the world.

A third means of participating in the industry is by building the ships. Only three countries are significant suppliers of ship hardware, as ship building takes place predominantly in China, Japan and the Republic of Korea, accounting for 91.9 percent of gross tonnage constructed in 2016. That China and

2 UNCTAD, Review of Maritime Transport 2017 (Geneva: UNCTAD, 2017), Table 2.3.
3 Id.
4 Id., Table 2.9.
Korea have significant presence in this component of the industry would have appealed to Elisabeth.

The questions that should be asked are: How does shipping create value for a nation state? Is it through the ownership function that value is created? What are the best policies for nation states to ensure that they benefit from value creation in the industry?

In the 1970s and 1980s, there was a firm belief that participation in the business of shipping would bring benefits to developing countries through the reduction of freight payments internationally, a drain on the foreign currency reserves of these countries. The crews of a nationally owned fleet could presumably be paid in local currency, assuming that there was a requirement to use national citizens; the fallacy of this belief caused considerable consternation as the reality was that most shipping companies wished to be paid in the industry standard of US dollars (or other hard currencies in more recent years) and would have to pay expenses like fuel and foreign port charges in a hard currency. This means that the residual value of revenue minus expenses is positive only when the ship makes a profit in hard currency, that the revenue is received in a hard currency, and that the costs as, as much as possible, are in the local currency. This is not, and has not, always been the case, and the impacts on developing countries have been particularly destructive in those years when the industry is unprofitable, and this industry is notoriously cyclical.

**National Policies to Acquire Value from Shipping**

Given the above statistics, many developing countries clearly decided that participation in the industry is easiest and quickest through offering a flag of registry to foreign owners. Simply, charging a registration fee brings in foreign exchange from developed country owners, although not substantive levels of income tax, as corporate tax on shipping needs to approximate zero in order for the particular flag to be attractive.

If developing country value creation is not through ownership, and only minimally through registration, does it come from shipbuilding (or shipbreaking)? The argument is positive so long as the local government does not feel it must subsidize the industry to generate vessel orders or scrapping activities. Again, many countries have allowed subsidy policies to destroy that means of creating value.

Finally, can value be created through the offering of ship management activities? This question was investigated by Canadians to explore how Canada might benefit from shipping without necessarily subsidizing or protecting a
national flag fleet. Canada supports its national flag fleet through a cabotage policy, but is there more to be gained? The report concluded that the valuable jobs in shipping are those created by ship management companies. Countries that serve as ship management locations, i.e., Cyprus, Hong Kong, Singapore and Malta, generate employment for professional shipping jobs (accounting, crew management, marketing, operations planning, and the like) and then acquire the personal income tax revenue from those jobs rather than the corporate income tax from the ship owning company. Changes in 1992 to Canada's tax laws created the opportunity for Canada to serve as a ship management center with significant revenue for government generated from employee personal income tax. Today, Vancouver is one of the top maritime capitals in the world (ranked 24th) by DNV/GL.

For the most part, vessel ownership is a more expensive option for trading interests than buying shipping services on the open market. A 1985 study examined the fleet development initiatives of five developing countries and concluded “the ability to gain increased control of shipping through government measures designed to promote private sector investment is tied to the ability of companies to engage in such an investment.” In other words, success in developing country investment in shipping needs strong capital market access, the very thing many developing countries lack. In seeking greater prosperity, four of the five developing countries examined only found greater debt.

Furthermore, it is important to recognize that shipping creates value at the port, as it not only creates shore-based cargo-handling employment, but also serves to connect exporters and importers to world markets and suppliers. It is here, as the 2017 Council of Canadian Academies study found, that the true value of shipping accrues; the value of connectivity to world markets was nine times the economic value (GDP) found in traditional economic impact

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5 Jonathan Seymour and Associates, _Vancouver: An International Centre for Maritime Commerce Final Report_ (Vancouver: Asia Pacific Initiative Transportation Task Force, 22 December 1988).
6 The requirement to use a vessel of national flag vessel for domestic marine traffic.
7 M.R. Brooks and J.R.F. Hodgson (2005), “The Fiscal Treatment of Shipping: A Canadian Perspective on Shipping Policy,” in _Shipping Economics: Research in Transportation Economics_, Vol. 12, ed., Kevin Cullinane (2005), 143–171.
8 E.W. Jakobsen et al., _The Leading Maritime Capitals of the World_ (Norway: DNV/GL & Menon Economics, 2017), https://www.dnvgl.com/maritime/publications/leading-maritime-capitals-2017.html, last accessed 13 August 2017.
9 M.R. Brooks, _Fleet Development and the Control of Shipping in Southeast Asia_, Occasional Paper 77 (Singapore: Institute of Southeast Asian Studies, 1985), 89.
The true value of shipping, therefore, is in its role as a generator of trade-related economic development for a country. Brooks, Sánchez and Wilmsmeier (2014) evaluated national shipping policies in six Latin American countries in order to identify impediments to the provision of efficient regional shipping, updating the earlier framework of shipping policies to include: (1) domestic cabotage policies (and any exceptions for foreign-flagged vessels), (2) shipbuilding requirements for vessels accessing regional cargo, (3) existing bilateral cabotage agreements, (4) foreign ownership restrictions on national flag shipping, (5) shipping taxation, (6) crewing requirements, (7) carbon-pricing for fuels and/or existing emissions control areas, (8) pro-national flag incentives, and (9) any other requirements/rules or special treatment of cabotage services/ships. This is a good checklist for any country wanting to understand why it may or may not attract shipping services with a net gain for the local economy. Non-tariff barriers to shipping operations in any geographic region (at the national or regional level) can impact on the ability of the shipowner to provide fully efficient and effective shipping services at a price the market will bear. Without such efficiencies, the trade routes and markets a developing nation seeks to secure may become inaccessible.

Final Thoughts

Elisabeth Mann Borgese would be very surprised to see the world of shipping today as not having greater developing country beneficial ownership. In her view, the passage of the UNCTAD Convention on a Code of Conduct for Liner Conferences 1974 was supposed to assist in securing that participation by promising them a 40 percent share of liner conference traffic (Article 2). Even though the convention came into force, the participation outcome never materialized because it was economically unrealistic and not supported by the cargo owners paying for the services. Today, many developing nations see shipping as producing value by simply serving as flag states for a truly global industry, collecting a minimum foreign registration income that has little loyalty. Owners of poor quality vessels

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10 Council of Canadian Academies, The Value of Commercial Marine Shipping to Canada (Ottawa: The Expert Panel on the Social and Economic Value of Marine Shipping to Canada, Council of Canadian Academies, 2017).
11 Brooks (1985), supra note 9.
12 M.R. Brooks, R. Sánchez and G. Wilmsmeier, “Developing Short Sea Shipping In South America: Looking Beyond Traditional Perspectives,” Ocean Yearbook 28 (2014): 495–525.
continue to migrate to flags where there is the least amount of government interference, while those seeking a premium quality business image choose from reputable flag states that offer significant tax advantages without the damage to reputation that comes from a neglectful government bureaucracy. The value in shipping today continues to come, as it did in Elisabeth's day, from its role in facilitating trade and the resulting wealth creation that accrues from trade participation. This means that UNCTAD's current trade facilitation initiatives and its liner connectivity focus are of highest priority in securing economic prosperity for developing countries.

Globally, the way national shipping policies have evolved, and with today's world concerns about the oceans and our planetary future, we can expect to see the ownership and flag decisions taken by multinational shipping companies monitored by governments. They will find participation in strong port state control intervention, international labour conventions, and a climate policy agenda that seeks safer ships, cleaner seas and responsible shipping as the paths to follow, all approaches that would have appealed to Elisabeth.