BRIDGING THE DITCH: FRESH PERSPECTIVES ON SHIPPING ACROSS THE TASMAN

This is not a "paper" in the strict sense in that it does not set out to discuss or probe a problem in depth nor does it record a happening or incident which is of current interest to the members of the Association. It is in fact an introduction to the two papers which will follow so can therefore be read or, preferably, ignored.

On a previous occasion I made the comment that our Association had been ahead of our politicians by several years in that we had formed a Maritime Law Association of Australia and New Zealand before CER was even thought of. I believe wholeheartedly that this Association of ours is a good one, and it is, I think, unique in being the only participant in CMI which combines two independent sovereign states in one membership. Likewise, I think CER is a good thing for both countries. We are isolated geographically from everything but Coronation Street and Bill Cosby; we come from common stock - very common, some would say; we share our politicians - Sir Joe Bjilke Peterson was a New Zealander, when all's said and done; and we are separated only by "The Ditch" - the Tasman. Once upon a time it took four days to travel from New Zealand to Sydney by ship. Then came the flying boats, which cut the time down to about eight hours, followed by DC6's, Electras, DC8's, 707's, 747's and now 767's in which the stewardesses barely have time to pour more than half a dozen gins into you before you're at the other side. You can, in fact, fly to Sydney or Auckland, do about a day's work then fly home again, all within 24 hours. A very long day, but only one nevertheless. And from Sydney to Perth? It takes six hours, twice as long as the hop over The Ditch.

It is said on occasion that Australians and New Zealanders hate each other's guts and from some of the comments from the news media and commentators on both sides one might well be fooled into believing that this was the ultimate truth. In fact, of course, it's the ultimate load of old codswollop. If the media can find some ape to scream trans-Tasman hatred, ridicule and contempt they're happy to report it in gory detail. I know we disagree on nuclear and anti-nuclear matters and that New Zealand is no longer active in the ANZUS alliance, but to an increasing extent we are seeing the benefits of a joint approach to many of the problems which face us in our trading relationships with the rest of the world and cashing in on it. There is no news value in our two countries living and working together in

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peace and harmony, however, so this is ignored by the media. I have to concede in all honesty, though, that sport comes into a different category because the fury which is generated by our regular sporting engagements is of such intensity and expressed at such a level of decibels as to bewilder the casual onlooker. Yet in encounters which are of vital importance, such as a punch up in a pub in Earl's Court in London, you find the youth of both countries standing shoulder to shoulder in the best traditions of the battlefields of history which we have shared.

So - we have CER, and a steadily increasing tonnage of cargo moving across The Ditch. Most of it will be carried by sea and this is what I want to direct attention to today. In the context of CER should there be closer co-operation between Australia and New Zealand in the provision of shipping services in the Tasman and if so, what form should it take?

At the outset it has to be admitted that our maritime unions have never enjoyed the support of the citizenry at large. There are a number of reasons for this but I would suggest that times have now changed to the extent that our seafarers are deserving more of support than of castigation and crucifixion. Their numbers have been drastically reduced, conditions of employment downgraded and their former aggressive bargaining position substantially weakened. There are some seafarers who have failed to appreciate these facts and still posture and declaim but their numbers are steadily decreasing. Perhaps sadly, I have to say that their attitudes do not always keep pace with those of their elected representatives who tend to be much more realistic in their appraisal and acceptance of economic realities and can thus have an incredibly hard task in persuading them to follow unpalatable courses of action. At the same time, it has to be noted that conditions of employment, once gained, are given away with great reluctance and, when all is said and done, those conditions were given by employers at the negotiating table.

In the present climate, then, should our ships and seamen have some sort of protected status in our trade across The Ditch?

An ideal starting point for this type of inquiry is a New Zealand statute of 53 years ago, the Protection of British Shipping Act, 1936. It's a fascinating piece of legislation and has the title (capitals and all):

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> An Act to protect British Shipping against Competition from Foreign Shipping in the Carriage of Passengers and Goods between New Zealand and the Commonwealth of Australia if such Foreign Shipping is by the Laws of its own Country protected against Competition from British Shipping in the Carriage of Passengers or Goods between Ports or Territories of that Country.

The Act, which has only 7 sections, was amended in 1952 to widen its scope enormously by the substitution of the word "Commonwealth" for "British" where it appears in S.3, the principal section of the Act. The practical effect of all of this was that ships of a foreign country were barred from trading in the Tasman if the laws of that country prohibited Commonwealth ships from carrying passengers or goods between its ports or territories, imposed restrictive conditions on Commonwealth ships, or granted to its own ships "... from any source any subsidies, concessions, rebates, allowances or other valuable privileges whatsoever which enable them to compete on unequal terms with British shipping in the carriage of any passengers or goods". The intriguing thing about this legislation before it was amended was that it purported to protect British ships trading in the Tasman and it has to be borne in mind that when the Act was promulgated in 1936 all ships on the New Zealand and Australian registers were classed as "British" and registration was controlled by S.91 of the Merchant Shipping Act, 1894 (Imperial) which applied to "the whole of His Majesty's dominions". This was extraordinarily restrictive; not even in the United States did their 46 U.S.C.A. 883 extend beyond their own shores and attempt to regulate international trade.

The Protection of British Shipping Act is now a dead duck, however, but I think that the maritime unions of our respective countries still feel deep down that they have a prescriptive right to the trade across The Ditch. If they do, should they? If they don't, should they? The question is difficult, and the answer could probably depend upon one's political philosophy, but I suggest that there is another factor which could influence the debate, namely, commercial

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safety. We are subjected these days to the demand that market forces should be allowed to dominate trade - except for my own trade, of course, and particularly from outside competition - but could we not be at some risk if cheap, foreign flag vessels were given open slather in the Tasman? Many of you are aware of what has happened in recent years when a number of shipping organisations have gone down the plug hole and left shippers and consignees paying large sums of money by way of additional freight to give or obtain delivery of their cargo. Karlander and A.E.S. come to mind at once, particularly the latter because one of the major statutory boards in New Zealand had shipped large quantities of its commodity to European ports on the happy promise of a low freight rate but had to pay a lot more in legal fees and additional freight to get the cargo ashore and delivered at the other end. The board has now returned to the respectable - and more expensive - fold. My point is this: there is a level below which it is uneconomical to run a ship and rock bottom freight rates must be treated with suspicion, attractive though they may be. All of these chartered vessels were foreign flagged and crewed and were in the trade almost on a fly-by-night basis. It can therefore be suggested with some vigour that to have cut-price transport which might force Australian and New Zealand ships out of The Ditch could place us in commercial jeopardy if the operators decided to pack their tents and steal off into the night. There could therefore be a case for some form of protectionism.

Let me turn to the concept of cabotage by regarding the two countries as one for trading purposes. The American statute I referred to, 46 U.S.C.A. 883, provides inter alia that no merchandise shall be transported by water - on penalty of forfeiture, be it noted - between places in the United States, either directly or via a foreign port, in other than a vessel built in and documented under the laws of that country and owned by persons who are citizens of it. America is usually spoken of as the country where market forces dominate so how do you explain that restrictive enactment? And if it is good enough for America why should we get up tight about a similar regime across The Ditch, no matter what our local converts to the Chicago school of economics have to say about the matter? A.N.L. very nearly got its hands on the Shipping Corporation of New Zealand when it was up for grabs a few months ago and that could well have forged a true joint venture link between the two countries.

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I do not intend to comment on the demise of the Corporation other than to say it was heavily undercapitalised from the beginning and that the cost of the conditions of employment of the seamen was only a relatively minor factor in bringing the whole show down. The maritime unions raised hell at the end but the sudden and unannounced off-shore flagging and consequent sackings did nothing to assist industrial relations. In fact, the Chief Judge of the Labour Court went so far as to lift the Saloman v. Saloman veil of incorporation by describing the change of ownership to foreign companies as "a sham". Harsh words indeed.

Finally, a couple of stray thoughts. Should we have a true joint venture shipping company operating across The Ditch? Should our seamen be in a common pool from which crews would be drawn to man the ships of either country?

And finally-finally, a disclaimer. The views expressed above are not necessarily those to which I suscribe personally but are presented for the purposes of discussion, without prejudice and without admission of liability!

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