HEARING ON H.R. 1517, FOREIGN FLAG SHIPS

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS,
OCCUPATIONAL HEALTH AND SAFETY

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MAY 13, 1993

Serial No. 103–9

Printed for the use of the Committee on Education and Labor

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HEARING ON H.R. 1517, FOREIGN FLAG SHIPS

THURSDAY, MAY 13, 1993

House of Representatives,
Subcommittee on Labor Standards,
Occupational Health and Safety,
Committee on Education and Labor,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., Room 2261, Rayburn House Office Building, Hon. Austin J. Murphy, Chairman, presiding.

Members present: Representatives Murphy, Andrews, Faleomavaega, Fawell, and Ballenger.

Staff present: Jim Riley, chief counsel and staff director; Adrienne Fields, deputy staff director, Education and Labor; Ted Martin, professional staff; Vicki Nimmo, clerk; Molly Salmi, minority professional staff; Gary Visscher, minority professional staff; and Tim Butler, minority staff assistant.

Chairman Murphy. Good morning. We are here this morning to discuss the ramifications of H.R. 1517. The subcommittee has been working with this legislation for a number of years, and I am hopeful that our new President will be interested and supportive of our efforts, which I believe that he will.

The success of foreign ship lines cannot be disputed. For years now, they have been freely operating in American ports, being the beneficiaries of our free market economy, and have earned millions of dollars in profits. But we wonder whether simple business acumen is fully accountable for this success.

It is fair to say that much in the way of profits enjoyed by foreign shipping companies are earned at the expense of shipboard employees. Foreign maritime workers do not enjoy the same statutory protections and benefits as American seamen. What we are here for this morning is to answer the question, "Is there an unfair advantage that foreign operators have over American ship operators? Will H.R. 1517 improve America's competitive edge and the lot of the seaman?"

This legislation, we believe, will help legions of people from less fortunate nations working on the sea by stopping, if they exist, exploitative labor practices in American territorial waters. The bill also may help more American workers find gainful employment.

[The prepared statement of Hon. Austin J. Murphy follows:]

STATEMENT OF HON. AUSTIN J. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Good morning. I am pleased to be here this morning to discuss H.R. 1517. I have been working unsuccessfully with this legislation for a number of years, and I am hopeful that our new President will be more interested and cooperative than the last.

At previous hearings I have listened to many people speak about the need for this legislation. My staff has traveled to listen to firsthand reports of those who labor on foreign ships. Their stories are chilling and sad. The experiences of some onboard shipworkers remind me of the terrible and frightening stories of sailors from centuries long past. I was astounded to learn of the many abuses that routinely take place onboard some foreign flag ships.

The success of foreign ship lines cannot be disputed. For years now they have freely operated in American ports, been generous benificiaries of our free market economy and earned millions of dollars in profit. But, simple business acumen does not fully account for all their success. It is fair to say that much of the profits enjoyed by foreign shipping companies are earned at the expense of shipboard employees. Foreign maritime workers do not enjoy the same statutory protections and benefits as Americans. Because of this lack of protection their employers are able to reap huge profits.

This situation is clearly disgraceful. Profits gained at the expense of exploited workers represent a scandal of enormous proportions. The stories of abuse and exploitation onboard foreign flag ships are too numerous, and the continued existence of such activities is shocking. Many people have worked long and hard to develop our national labor code to provide a reasonable minimum standard for the modern world of the late twentieth century. Unfortunately, this enlightened work has ended at the shoreline, because the law of the sea seems mired in the middle ages.

This legislation though, is not strictly aimed at correcting numerous labor abuses. Foreign ship operators gain all the benefits of American commerce without having to obey any American worker protection statutes. These shipping lines find themselves in the enviable position of having their cake and eating it too. This situation creates an unfair double standard, and leaves American shipping at a decided disadvantage.

In this time of great world turmoil, America needs to regain its stature as the world's foremost economic power. H.R. 1517 puts the American shipping lines and the foreign shipping lines on a level playing field. The unfair advantage that foreign lines have over American lines is wiped away when this legislation is enacted. H.R. 1517 sharpens America's competitive edge.

America has made itself a great Nation through hard work and sacrifice. But we have always tried to balance our striving for economic success with a compassionate outlook towards workers. We have attempted to create laws that humanely and fairly protect the lives of workers. Unfortunately, we are one among few nations that follow this course. No responsible maritime nation would choose to maintain a flag of convenience registry that supports such willful and careless disregard for the lives of people.

This legislation will help legions of people from less fortunate nations working on the sea by stopping exploitive labor practices that occur in our territorial waters. H.R. 1517 may also help more American workers to find gainful employment in a revived U.S. maritime trade, so much of which is conducted under runaway "flags of convenience." I look forward to prompt action on this legislation.

Chairman MURPHY. Mr. Fawell, do you have an opening statement?

Mr. FAWELL. Yes, I do, Mr. Chairman. I am looking forward to hearing the testimony today from our witnesses on this legislation which extends the Fair Labor Standards Act as well as the National Labor Relations Act to foreign flag ships.

I remain concerned that this bill, however well-intended, would have a number of harmful effects. My first concern is that H.R. 1517 would conflict with well-established international and maritime laws. It is the established rule of international law that the internal affairs of a ship are ordinarily governed by the law of the flag state. How we would impose and enforce U.S. labor law on foreign flag ships presents another interesting issue.

We are, today, in a global economy, with people and goods flowing at an increasing rate from country to country. Actions such as these will only lead to friction where comity should exist. International conventions codifying long established principles have been created to develop and secure uniform standards for vessels operating internationally. Organizations such as the International Maritime Organization and the International Labor Organization have dealt with issues governing jurisdiction over the employment relationships aboard these vessels.

The U.S. is already a party, in fact, to International Convention 147, which establishes minimum standards in merchant ships and provides for protection against poor working conditions on vessels. The treaty allows port states to exercise appropriate authority in response to complaints of foreign seamen about working conditions on foreign flag ships.

In previous years, I have asked for a study of how ILO 147, which is the international law to which I make reference, is working and whether or not it is effective. If changes are needed and the enforcement mechanisms under ILO 147 are not effective, then we obviously should work with international labor organizations to address those issues.

Finally, I believe that many who support this legislation are frustrated with the amount of business that is leaving the U.S. and moving into foreign countries. I share those concerns. Testimony heard by the labor-management subcommittee in 1989, as well as by this subcommittee 2 years ago, convinced me that our laws and government policies actually force many U.S. shipowners to operate under the flag of another country.

We need, therefore, to simplify and to reduce the taxes and subsidies we employ in regulating the shipbuilding industry. Only in this way will the U.S., I believe, acquire a competitive maritime force. I do not believe that we are competitive at this particular time, except with the cabotage laws that may apply or in other areas where subsidies are granted to shipping.

I have two statements, Mr. Chairman—from the Council of European and Japanese National Shipowners' Association and the Federation of American Controlled Shipping—as well as a letter to the State Department from the governments of 14 other countries. I would ask at this point unanimous consent that they be included as a part of the record.

Chairman MURPHY. Without objection, we will certainly admit the letters as requested.

Mr. FAWELL. Thank you, Mr. Chairman.

[The material referred to follows:]

STATEMENT OF THE COUNCIL OF EUROPEAN &
JAPANESE NATIONAL SHIPOWNERS' ASSOCIATIONS (CENSA)
BEFORE THE SUBCOMMITTEE ON LABOR STANDARDS,
OCCUPATIONAL HEATH AND SAFETY OF
THE HOUSE EDUCATION AND LABOR
COMMITTEE ON H.R. 1517
MAY 13, 1993

The Council of European & Japanese National Shipowners' Associations, known as CENSA, is pleased to present this statement for the Committee's consideration. CENSA is comprised of the National Shipowners' Associations of Belgium, Denmark, Finland, France, Germany, Greece, Italy, Japan, the Netherlands, Norway, Sweden and the United Kingdom. The International Shipping Federation joins in these comments. The International Shipping Federation is the international employers' organization for shipowners and is concerned with labour affairs and manning and training issues at international level. Membership comprises national shipowners' operations of over 20 countries including all the members of CENSA, and together represents more than half of the world's merchant tonnage. The American Institute of Merchant Shipping is a member of ISF.

CENSA opposes enactment of H.R. 1517 for the following reasons:

- The Bill would place the United States in conflict with international law which has recognized that laws of the flag state should govern vessels and the Bill would reverse Supreme Court precedent and practice.
- The Bill would violate and undermine existing International Agreements to which the United States is

a party and which now protect merchant seamen, including:

- The International Labor Organization Convention 147
- The 1958 Convention on the High Seas.
- Existing Treaties of Friendship Commerce and Navigation.
- Vienna Convention on Consular Relationship and Optional Protocol on Disputes of 1963.

- The Bill would intrude on the sovereignty of foreign nations, invite other countries to react in the same manner against United States flag vessels and adversely affect international trade.

I.

THE BILL WOULD CONFLICT WITH INTERNATIONAL LAW AND UNITED STATES SUPREME COURT PRECEDENT

The present bill seeks to impose United States laws of collective bargaining, union elections and representation, United States unfair labor practices and wage control over foreign vessels calling at United States ports. It would do so by making foreign vessels subject to the full reach of the National Labor Relations Act, the NLRB and the Fair Labor Standards Act of 1938. It would bring the United States in conflict with the laws of the countries of registry of foreign vessels, would violate long-standing rules of comity and international law and practice, would intrude into the labor relations of foreign vessels,

adversely affect international trade between the U.S. and foreign countries and injure international shipping, including U.S.-flag vessels.

Under both international and domestic law, vessels have long been considered as an extension of the state in which they are registered. This doctrine, i.e. giving recognition to a vessel's country of registry, called the flag state, has been followed for very practical reasons. Unlike facilities such as manufacturing plants which have fixed geographic locations, vessels constantly move, spending limited periods of time in ports of many countries and most of their time on the high seas beyond the territorial jurisdiction of any country. To foster a legal regime for vessels which would impose differing and changing national rules based on temporary contacts, would foster chaotic and contradictory regulation. It would make the uniform application of any law and foreseeability of long term relationships impossible and disrupt trade by the resulting inefficiencies and clash of sovereignty and rules. It is for these very practical reasons and to reflect the sovereignty of the state where the vessel owners are incorporated and flagged, that flag state regulation has been uniformly accepted by the nations of the world under international law and comity. In any event, the absolute jurisdiction of all sovereign states, including the United States, does not extend beyond their own territorial waters. This approach based on the flag state concept has permitted a single and predictable legal regime for each vessel.

This long-standing position of the nations of the world has been recognized and followed by the United States as a matter of

comity. In Wildenhus's Case, 120 U.S. 1 S.Ct. (1887), the Supreme Court said:

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or of the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require."

In McCulloch v. Sociedad Nacional, 372 U.S. 10 (1963), the Supreme Court reviewed the adverse impact of an attempt by the United States to impose pervasive regulation on the internal order of foreign ships and stated:

> We note that both of these points rely on additional American contacts and therefore necessarily presume the validity of the "balancing of contacts" theory of the Board. But to follow such a suggested procedure to the ultimate might require that the Board inquire into the internal discipline and order of all foreign vessels calling at American ports. Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well. In addition, enforcement of Board orders would project the courts into application of the sanctions of the Act to foreign-flag ships on a purely ad hoc weighing of contacts basis. This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice. 372 U.S. at p. 19.

II.

THE BILL WOULD VIOLATE INTERNATIONAL AGREEMENTS TO WHICH THE UNITED STATES IS A PARTY

The extension of U.S. jurisdiction into labor matters involving foreign-flag vessels would further be in direct violation of existing treaty obligations of the United States.

A.

International Labor Organization Convention 147.

The United States is a party to ILO Convention 147 which it ratified on 12 May 1988. This Convention places the responsibility for matters envisaged by the Clay Bill with the Country of Registry, and provides for a complaint procedure.

On February 1, 1988, the Senate ratified by a vote of 84-0 and President Reagan on May 12, 1988 signed the ratification documents placing in force ILO Convention 147. This convention recognizes the national registry of ships and in Article 2(b) places squarely on each individual state the duty:

> (b) to exercise effective jurisdiction or control over ships which are registered in its territory in respect of--
>
> (i) safety standards, including standards of competency, hours of work and manning, prescribed by national laws or regulation;
>
> (ii) social security measures prescribed by national laws or regulations;
>
> (iii) shipboard conditions of employment and shipboard living arrangements prescribed by national laws or regulations, or laid down by competent courts in a manner

equally binding on the shipowners
and seafarers concerned;

The Convention is the preeminent international instrument governing labour conditions on ships. It contains a specific procedure for dealing with complaints of adverse labour conditions which are verified following inspection of foreign flag vessels in the ports of a member state. In such cases the member state may make a report to the relevant flag state and, in addition, may detain the ship until the adverse conditions are rectified.

B.

1958 Convention on the High Seas

Likewise, the United States is party to the 1958 Convention on the High Seas (signed April 28, 1958 and entered into on September 30, 1962) which recognized the right of each individual state to exercise its jurisdiction over the "administrative, technical and social matters" of ships flying its flag. (See Article 5.) The Treaty further placed on each state the requirement to take measures to insure the safety at sea with regard to "the manning of ships and labor conditions for crews taking into account the applicable international labor instruments." (See Article 10.)

C.

Treaties of Friendship, Commerce and Navigation

The United States has furthermore entered into Friendship Commerce and Navigation Treaties which recognize the right of

flag states over their vessels and grant most favored nation status. The treaty between the United States and Greece, Treaty of Friendship, Commerce and Navigation, August 3 and December 26, 1951, United States-Greece, 5 U.S.T. 1829, T.I.A.S. No.3057, provides in relevant part that:

> Nationals and companies of either party shall be permitted to engage, within the territories of the other party, accountants and other technical experts, executive personnel, attorneys, agents and other employees of their choice . . . [emphasis added].

The National Labor Relations Act's (NLRA) mandatory requirement, for example, under Section 8 of that Act requiring that employers bargain with a certified union about "terms and conditions of employment," would seriously impact this freedom of choice provision if the Clay bill is enacted and be contrary to this Treaty. The provisions in the Greek Treaty apply to all treaty nations under the usual most favored nation provision found in each Friendship, Commerce and Navigation Agreement. Each of the treaties further recognize the right of the flag state to regulate its own vessels. See e.g. Treaty Between the United States of America and The Federal Republic of Germany, October 29, 1954, Articles XIX, XX, XXI, XXII;. See also the convention cited in Wildenhus's Case and the agreements cited in Note 2 by Mr. Justice Douglas in McCulloch v. Sociedad Nacional, 372 U.S. 10, 22.

D.

Vienna Conventions on Consular Relationships and Optional Protocol on Disputes of 1963

To enforce international law, nations have long imposed upon the accredited consuls of each nation the duty of acting with respect to any labor matters concerning their respective vessels when they are in foreign ports. These obligations have been recognized specifically by the U.S. in Sections 5(k) and (l) of the Vienna Conventions on Consular Relationships and Optional Protocol on Disputes of 1963, which was ratified by the Senate on October 22, 1969, and entered into force with respect to the United States of America on December 14, 1969. U.S. Consuls in foreign ports exercise such obligations in foreign ports for United States flag vessels as do the Consuls of foreign nations in U.S. ports over their respective flag vessels.

III.

THE BILL WOULD INTRUDE ON THE SOVEREIGNTY OF FOREIGN NATIONS, INVITE RETALIATION AND DAMAGE UNITED STATES FLAG AND INTERNATIONAL TRADE

A.

Intrusion Into Foreign Domestic Law and Sovereignty

The present bill seeks to impose U.S. domestic labor laws on certain foreign flag vessels, namely passenger vessels, bulk vessels and certain vessels performing lighterage services on the high seas. It does so with jurisdictional tests which would turn on the percentage of crew who are citizens of the country of

registry and a 50 percent test of actual and/or beneficial ownership of the vessel by citizens of the country of registry. In other words, the law seeks to exercise United States jurisdiction by intruding into the choice of standards chosen by each flag state for qualification under its ship's registry. The number of crew who are citizens of foreign countries and the degree of ownership, directly or indirectly, beneficial or not, are sovereign choices for each country. Such tests have no relationship to the United States and the application of the domestic labor laws. Under such a test, the reach of the United States labor laws could involve over 47.2 percent of world tonnage and most of its trading partners.[1/] Clearly every sovereign country is entitled to make its own determination of its labor laws applicable to persons under its jurisdiction. If this far reaching and intrusive statute were enacted, shipping and trade with the United States would immediately become involved in extended and persistent clashes of sovereignty and litigation.

The only proper approach is to respect the flag of the vessel and its registry which has always been the basic test for exercise of jurisdiction over the internal affairs of the operation of a ship, and it is the flag of the vessel that has been recognized under international law and by the Supreme Court. See, Lauritzen v. Larsen, 345 U.S. 571 (1953).

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[1]See Table 5, UNCTAD Review of Maritime Transport, 1991.

B.

Adverse Impact on United States Flag Carriers

Unilateral action such as proposed by this legislation could not and would not exist in a vacuum. Other countries would be forced to retaliate by setting aside the U.S. labor laws of U.S. flag ships when they are in their ports and U.S. ships would be subject to foreign jurisdiction. International protection of seagoing personnel throughout the world under the ILO Conventions and other treaties would be undermined and there would be less, not more, protection for seamen. The resulting harm would undermine all the international efforts which have been made thus far, and United States trade would be hurt.

We have heard it implied that if the United States were to enact this legislation it would be doing simply what other foreign nations are doing. We reject that view. Other nations are not seeking to intrude and impose their laws upon the internal labor matters of vessels which do not carry their flag. They have pledged not to do so under the treaties, international practice and international law, just as the United States has pledged to respect the laws of the flag state.

C.

Damage To International Trade

International commerce and international trade between nations depends upon respect for the national laws of each of the nations involved. Trade and the merchant marines of the world, including that of the United States, cannot function efficiently in the chaotic conditions which this legislation would create.

CONCLUSION

The United States has recognized that the best approach to protecting merchant seamen and regulating labor matters in the international arena has been by the exercise of international law, comity and international agreements. The choice of the United States and the international community of nations has been reliance on the laws of the flag state. Unilateral action by each port state would result in a multitude of different laws, a clash of sovereign states, disruption of trade, and adverse consequences to the vessels of the port states. The major step forward was the ILO Convention 1947, which was hailed by labor of all countries. The present legislation would undermine that agreement, harm seamen's rights and hurt United States and world trade and its fleet, without any positive benefits.

We urge this Committee not to pass the proposed legislation.

Respectfully submitted,

Council of European & Japanese
National Shipowners'Associations

May 13, 1993

By _____
Peter G. Sandlund
Washington Representative

Council of
European & Japanese
National
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June 4, 1993

The Honorable Harris W. Fawell
Ranking Minority Member
Subcommittee on Labor Standards
House Committee on Education and Labor
Room B 345A Rayburn Building
Washington, D. C. 20515

H. R. 1517 - A bill to extend coverage of certain Federal labor laws to foreign documented vessels.

Dear Mr. Fawell:

I refer to the May 5 hearing on the subject bill and to the testimony given by Thomas J. Schneider, Esq. of the firm of O'Connor & Hannon.

As reflected in the transcript of the hearing, pages 44 and 52, during the Question and Answer period, you inquired with Mr. Schneider regarding any possible parallel legislation in other jurisdictions, notably Germany, as well as the EC as a whole. In responding to your inquiry, Mr. Schneider stated that Germany had legislation on its books that would reach extraterritorially to vessels of other registries. Mr. Schneider also stated that, even though this law was in existence, it was not in force. As such extraterritorial application did not ring true to us, we inquired with our German Members regarding the existence of such a law in their Country, and we have now been advised that German labor laws do not extend to foreign-flag vessels and their crews by reason of any domestic law. Germany's relations with foreign-flag vessels is under the auspices of those international conventions to which Germany is a party.

Mr. Schneider's claims also included a statement to the effect that "social legislation" that exists within the Common Market "is far more extensive and intrusive in the employment relationship than is anything the United States will ever get to." As we were unfamiliar with the existence of any such social legislation, we inquired with Brussels regarding the present status and were advised as follows:

> "Currently there is no European Community legislation regulating workers' terms of employment. The EC Council is discussing proposals for Community-wide legislation on certain aspects e.g. working hours and works' councils. We understand that, following consultation, the Council is likely to propose

that shipping should be exempt from certain portions of this legislation. At no time has there been any suggestion that the employment of non-Community seafarers on non-Community flag ships should come under such legislation."

As you will note from the above, the claims stated in response to your inquiry were not in conformity with the factual situation in these jurisdictions, and we ask that you include this statement in the record of this hearing in order to avoid any decisions being made on the basis of the misconceptions conveyed during the hearing.

Thank you for your attention to this matter.

Yours very truly

PETER G. SANDLUND
Washington Representative

PGS:ps
cc: The Honorable Austin Murphy, Chairman
Mr. James C. Riley, Majority Counsel
Ms. Molly Salmi, Minority Counsel
Ms. Kristin Jacobsen, Legislative Director.

The Governments of Belgium, Denmark, Finland, France, Germany, Greece, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom and the Commission of the European Communities ("the Governments") present their compliments to the Department of State and have the honour to draw the attention of the Department of State to a bill recently introduced in the House of Representatives (HR 1517) which would extend US federal labour laws to foreign flag ships.

The Governments are gravely concerned by this proposal which would not be permissible under customary international law and practice under which flag states remain solely responsible for the application of labour and other similar laws to ships on their registers. The Governments continue to attach great importance to these principles and request the Department of State to bring their concern to the attention of all interested parties of the United States Government.

The Governments avail themselves of this opportunity to renew to the Department of State the assurances of their highest consideration.

Washington, D.C., 6 May 1993

The Department of State
Washington, D.C.

Chairman MURPHY. Thank you, Mr. Fawell.

Congressman William Clay, who has been a principal sponsor of this legislation for a number of years. He apologizes for not attending. This morning, the Budget Committee is having a serious budget conference and he must attend that.

Our first panel of witnesses will please take the chairs here at the front table: Deacon Robert Balderas, National Director, Apostleship of the Sea; Mr. Terry Turner, National Director, Seafarers International Union of North America; Mr. John Sansone, Director, International Transport Federation, International Longshoremen's Association; and Thomas J. Schneider, Esquire, Restructuring Association.

We are also pleased to have with us this morning Mr. Tal Simpkins, and I understand that Mr. Simpkins, who is well known and respected by the committee, will be submitting a written statement for the record by Louis Parise, President, AFL-CIO Maritime Committee. I want to thank you, Mr. Simpkins, for foregoing your opportunity to testify personally in respect to the committee's time on a session day. I would appreciate your appearance if we have any questions to ask you following the panels.

The panel may proceed. Deacon Balderas?

STATEMENTS OF DEACON ROBERT M. BALDERAS, NATIONAL DIRECTOR, APOSTLESHIP OF THE SEA; TERRY TURNER, NATIONAL GOVERNMENTAL RELATIONS DIRECTOR, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA; JOHN A. SANSONE, JR., U.S. INSPECTORATE FOC COORDINATOR, INTERNATIONAL TRANSPORT WORKERS FEDERATION, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; AND THOMAS J. SCHNEIDER, ESQ., O'CONNOR & HANNAN, WASHINGTON, DC, COUNSEL TO THE AFL-CIO MARITIME COMMITTEE

Mr. BALDERAS. Thank you. Allow me to introduce myself and the Catholic Church ministry in which I serve. As you already know, I am Deacon Robert M. Balderas, National Director for the Apostleship of the Sea. The AOS, as it is known worldwide, is the Catholic Church's outreach ministry to all who work and travel on the high seas.

Evangelization, not proselytism, is the primary thrust of the AOS ministry. We do not seek converts to Catholicism among the seafarers but only conversions to a Christian lifestyle, both on and off ship. We proclaim the good news of salvation in Jesus by giving life to the Gospels through living Christian witness. We invite seafarers to hear the message and encourage them to respond through the practice of their faith, regardless of religious affiliation.

AOS chaplains may be found working in 54 American ports. They are daily ship visitors who are trained to act as counselors and spiritual guides and to preside at shipboard religious services. Our port ministers attempt to create a parish environment for people on the move, and we work alongside representatives of other major denominations so that the spiritual needs of the non-Catholic seafarers are not overlooked but addressed as well.

The human needs of seafarers are considered very important, too. The AOS does what it can to satisfy these needs by providing

free transportation to affordable shopping malls and centers for seafarers. The latter provide safe havens for socializing, relaxing, recreation, telephones, and just quiet places where letter writing, prayer, and meditation is possible.

The fulfillment of a seafarer's needs is challenged today by the technological advances in the maritime industry. Oceangoing vessels formerly required days in port for the loading and unloading of cargo. With the advent of containerization and other specialty carriers, port times have been reduced from days to hours. The numbers in ship crews have decreased, too. This has resulted in today's seafarers working longer hours—and for less pay, I might add—for the majority come from developing nations whose chief export product is their labor force.

Similar challenges are faced by those working in the cruise industry. Cruise ships and crews spend little time in port, and much of it is spent either cleaning up after passengers or preparing for the next voyage. The cruise ships that allow chaplains aboard while underway more often than not prefer chaplains to paying their paying clientele. There is no encouragement, and hesitant approval at best, for ministry to crews.

According to the U.S. Coast Guard, fishing is the most dangerous form of occupation. In 1991, 39 fishing boats were lost off the Alaskan coast. This number increased in 1992 to 45. The AOS is greatly concerned about the living and working conditions of fishers. The Americans and foreigners who work aboard fishing vessels are among the worst abused.

This is the environment in which AOS port ministers work. None of this is new. All of this has been stated before and in more detail. The horror stories are many and unbelievable to the stranger. Nevertheless, they are true, but I do not believe it would serve any purpose for me to take up more of your valuable time by citing new individual tales of horror.

Suffice it to say that men and women seafarers are being overworked, underpaid, cheated of their wages, deposited at ports foreign to them like so much dunnage, as we speak. Far too many of today's seafarers are treated like ship spare parts. They are used until they wear out or break. Then they are discarded without a second thought. Nothing seems to change.

AOS chaplains are not ship inspectors, social workers, union organizers, attorneys, or paralegals. Neither do any aspire to such positions of importance. We are representatives of the Catholic Church under its leader, Pope John Paul II, and our worldwide network is tied together by his Pontifical Council for the Pastoral Care of Migrants and Itinerant People, all working under our local bishops.

We are sent forth by our church to nurture the spiritual life of God's people and accept the challenge under difficult circumstances. The impediments to our ministry are as broad as those faced by the seafarers in practicing their faith and for the Catholics participating in the sacramental life of the church.

Frequent separation from home and family should be sufficient hardship for any man or woman to endure while working for the benefit of family, but for the seafarer, there is much more. Can anyone imagine the pain that comes with receiving cable notifica-

tion on the death and burial of a loved one? Your 8-year-old daughter was killed, your brother died, or your wife was rushed to the hospital are the contents of just some of the cables I have read. Every written notification mentioned herein was delivered long after the fact, some intentionally so to avoid having to replace a seafarer in the middle of a contract period.

Without seafarers, the wheels of international trade would have trouble turning. Is it not enough that they miss family births, deaths, and celebrations because of their occupation? Must they also endure lifestyles similar to that of slaves or machinery? Must we continue to allow them to be overworked, underpaid, and oftentimes cheated of the little they earn?

In the case of Nelson R. Raby, et al, v. M/V Pine Forest, shipowners freely admitted to the fraudulent practice of double bookkeeping. Yet, the 9th Circuit Court of Appeals reversed a decision of a lower court which awarded the seafarers the monetary compensation they were entitled to. How long are we going to protect the unscrupulous shipowner? When is enough going to be enough?

Everyone in the AOS network prays for the day when seafarers, regardless of their nationality, will be looked upon as human beings, deserving of respect, fair treatment, and a just wage. The good news of salvation is difficult to deliver and much more difficult to accept in the midst of pain and suffering. The maritime industry would profit if justice for all prevailed. Hard working and productive crews could be the end result. This is why H.R. 1517 should be enacted.

Mr. Chairman, I thank you for having allowed me to speak and your committee for being present and listening.

Chairman MURPHY. Thank you very much, Deacon.

The next witness is Mr. Turner, Seafarers International Union.

Mr. TURNER. Mr. Chairman and members of the subcommittee, my name is Terry Turner. I am the national governmental relations director for the Seafarers International Union. I want to thank you for giving our union an opportunity to address this subcommittee. If it is okay with you, Mr. Chairman, I would like to submit my full statement for the record and make a brief summary.

Chairman MURPHY. Without objection, your entire statement will be part of the record.

Mr. TURNER. The Seafarers International Union represents men and women who earn their livelihoods working aboard U.S. flag vessels which operate on the Great Lakes, in the Nation's inland waterways, and on the high seas. On behalf of these seafarers and on behalf of the thousands of seamen working aboard foreign flag ships, with whom we have contact, I urge you to support H.R. 1517.

As you know, H.R. 1517, if it became law, would extend the workplace standards of this Nation to vessels engaged in American commerce. The SIU and thousands of seamen from around the world can tell you that this legislation is badly needed because ships have become, in many cases, the site of exploitative and dangerous workplaces. At the root of this problem is a flag-dodging mechanism allowed in international shipping, a mechanism we call "the runaway flag."

In essence, the runaway flag register is a mail drop, a government agency to which a shipowner pays a fee and, in return, his ships fly the flag of that nation. It is a revenue-raising scheme for governments which do not have any merchant maritime tradition. Among the flags for sale are those of Antigua, Barbuda, Vanuatu, the Cayman Islands, Panama, Libya, Honduras, Sri Lanka, and many more.

The runaway ship registry allows a shipowner to shop around for the cheapest of everything, thereby instituting a regime which has no ties to any nation. Insurance is purchased in one nation, an inspection company is hired from another nation, a manning agency from another nation is hired. In turn, that manning agency recruits seamen from several other nations. This layering obfuscates any responsibility. When the crew members on these vessels are subjected to slave-like working conditions, to living conditions not fit for civilized human beings, which country is responsible? The answer, in practice, is none.

The United States Congress has the power to end this abuse on vessels engaged in American commerce. Congress has the power to do this in a fair way. H.R. 1517 addresses working practices on all runaway ships engaged in American commerce. Thus, it establishes a level playing field for all ships competing in this trade.

H.R. 1517 recognizes the sovereignty of nation states. It does this by exempting vessels which have a majority of ownership and a majority of crew members from the nation where the vessel is registered. The bill rightly acknowledges that when a vessel has this kind of tie to a nation, the laws of that nation are invariably linked to the workplace of the ship.

H.R. 1517 is a chance for the United States to assert its moral leadership in this world. There are times when the United States, the world's only superpower and most stable long-term democracy, must step out in front when it comes to addressing human suffering and the exploitation of human beings.

Just as Congress stepped out ahead of any other nation when it came to protecting the environment, it can step out ahead in protecting human life by enacting this bill. On the environment, I refer to the Oil Pollution Act of 1990. Congress, in order to protect the environment, the oceans, and the coastal areas, enacted a far-reaching piece of legislation which mandated procedures for every oil carrying ship coming into American ports. Every one of these ships, regardless of their flags, regardless of the nationality of their owners, regardless of the nationality of their crew members, must comply with U.S. law.

What can be done for the environment can also be done on behalf of human beings. It is the decent thing to do. Congress, by enacting H.R. 1517, can use its position of world leadership to advance the basic human rights and civil rights the civilized world holds as inalienable. The passage by Congress of this legislation will earn the institution the gratitude of seamen everywhere.

Thank you very much, Mr. Chairman, for giving me this opportunity.

[The prepared statement of Terry Turner follows:]

TERRY TURNER
SEAFARERS INTERNATIONAL UNION

Mr. Chairman, members of the subcommittee:

My name is Terry Turner, and I am the Director of Government Relations for the Seafarers International Union of North America (SIU). The SIU represents thousands of merchant seamen working aboard U.S.-flag vessels operating in both domestic and international trades. Mr. Chairman, the SIU wishes to express its support for H.R. 1517, legislation to extend the protections of the National Labor Relations Act and the Fair Labor Standards Act to seamen on foreign documented vessels.

We commend your continued efforts in initiating legislation which pursues a solution to the ill-treatment and exploitation of merchant seamen employed on certain foreign documented vessels, especially those flying the flag of convenience. These vessels are oftentimes referred to as runaway registries by American maritime unions because of their use as a device for shipowners to pay a nominal fee to an agency of a non-maritime nation seeking to raise revenue, thereby escaping from the maritime nation's safety regulations, procedures and inspections, tax laws and higher wages.

Congress has the power to put a halt to this abuse. The seamen who would be affected by this bill currently are victims of an international shipping regime which allows shipowners to dodge the standards and regulations and social requirements of the civilized world. The runaway scheme has created a system in which a seaman has no attachment to any nation and none of the protections or rights afforded by any nation.

Congress has the power to do this in a fair way. H.R. 1517 addresses all runaway ships equally, regardless of the nationality of the ultimate ownership. H.R. 1517 recognizes the sovereignty of nation states by exempting those vessels which are owned by individuals from the flag-state and which are crewed by seamen from that flag-state.

Abuse of the kind that exists on runaway vessels does not take place on vessels on which the flag is closely associated to the nationality of the ownership and the crewmembers. This is because the laws of the flag-nation generally afford rights of workers, safety regulations and work procedures. This is not the case on runaway vessels, where nationality is obfuscated by the use of a flag which has nothing to do with the ownership of the vessel or the crew of the ship. In fact, the flag-state is often no more than a mail-drop. Countries like Vanuatu, Honduras, the Bahamas, Belize, and others do not have a merchant marine tradition or infrastructure. Thus, they are in no position to police the vessels registered under their flag. This system leads to abuse.

The SIU has learned of the abuse experienced by seamen on runaway flag vessels directly from the seamen of these ships. Their testimony and other eye-witness accounts indicate that seamen aboard these ships are generally paid as little as $300 per month and fed as much as one meal of rice a day, from countries such as the Philippines, Burma, and, most recently, Russia. For example, the Philippines consider human labor their number one export as the government promotes the employment of its citizens on foreign ships -- no matter the level of pay and benefits -- and in some shore-based industries in foreign countries in order to relieve the nation's huge unemployment crisis and bring in funds to

its economy. Further, the Burmese government exploits the labor of its own citizens to foreign-flag shipowners, promising a docile workforce which can be paid a pittance. And, in the case of Russia, with the dismantling of the once vast merchant marine of the Soviet Union and a weak economy, thousands of Russian seamen have turned to flag-of-convenience vessels for employment, becoming one more exploitable group of shipboard labor.

The *MV Advance*, a flag-of-convenience dry cargo ship recently restricted to the port of Norfolk due to a Safety of Life at Sea (SOLAS) intervention, mandated by international law, is an example of the dangers of runaway flags. The rust-plagued, rat-infested ship is owned by Denver Shipping Ltd. of Venezuela; flies the flag of Malta; is managed by World-Wide Ship Management of Chile; and has a crew of 24 Ecuadoreans. A joint investigation of the *Advance* by the Coast Guard and the International Transport Federation (ITF), with the assistance of other organizations, led to charges of 85 violations of an International Labor Organization treaty, ILO 147, which combines a number of treaties on basic shipboard conditions.

The list of problems with the 452-foot Advance is staggering. Some repairs have been made on the 19-year old vessel, but according to reports from the Coast Guard and the ITF, as well as news reports:

- The ship's sewage system has not worked for two years, and since then waste has been pumped into the sea. During the first month the vessel was tied up in Norfolk, toilets were emptied into the engineroom. Crewmembers eventually were required by the Coast Guard to shovel the ankle-deep waste into buckets, which then were taken to a disposal truck.

- Living quarters are infested with rats and roaches; the crew's drinking water is contaminated; there have been regular shortages of stores; crewmembers each have only one sheet and one towel; there is no hand soap or laundry soap on board; and, for an entire week, a stowaway was not permitted to take a shower.

- There are no medical supplies on board, and many ill crewmembers were denied medical treatment. A number of crewmembers had or have serious rashes and lesions. A steward department member has intestinal problems including worms or parasites.

- There are no survival suits or winter clothing on board.

- Crewmembers were being paid less than what they were promised, and some were being forced to work 16-hours per day or longer without overtime pay.

Additionally, those who cooperated with the Coast Guard and the ITF were punished with assignments such as painting and chipping outside in the dark and cold, and inside in unventilated areas for long stretches -- some lasting until approximately 4 a.m. No respiratory protection is available. The Coast Guard spokesman in the agency's Norfolk

office described the *Advances'* condition as "deplorable. It's an abomination in just about all aspect. The only thing I've seen in worse condition had been severely damaged in a hurricane." He added that the ship is a danger to the port, other vessels, the environment and those aboard.

It has been reported that some 1,200 seamen died last year in ship accidents, the majority of them involving runaway shipping. Thousands of other seamen bear the brunt of a system which seeks to expend the least amount of funds. These exploited seamen, often hailing from some of the most economically disadvantaged areas of the world, must purchase their shipboard jobs from unscrupulous manning agents; sign contracts stating one rate of pay, only to be paid something much lower; and work in unsafe conditions, fearful of reporting such to any outside authority.

Another example of crew mistreatment which readily comes to mind is that of the crewmembers of the *Braer*, a Liberian-flag tanker that lost power in the 22-mile channel between Scotland's Orkney Islands to the north and leaked 26 million gallons of oil. The crew certainly had their share of complaints. It appears that the vessel's management did its best to chip away at the pay of its seamen. Last January, the *Braer's* crew contacted the ITF in an attempt to rectify unpaid standby wages, insufficient food allowances, unpaid excess overtime for officers, inadequate manning and inadequate pay for Sunday and holiday work. There are many, many more examples which I could cite; however, in the interest of time, I would like to direct you to testimony presented by the SIU to this Subcommittee in the 102nd Congress.

The United States has within its power the ability to correct this abuse of human rights taking place under the guise of international competitiveness. Congress can pass H.R. 1517 and the President of the United States can enact it into law.

This is the decent thing to do. It will demonstrate once again that the United States is using its position of leadership in the world to advance the basic human and civil rights which the civilized world holds as vital to all humanity.

The passage by Congress of this legislation will earn the institution not only the gratitude of every American and foreign seamen but also that of exploited people everywhere.

Thank you.

Chairman MURPHY. Thank you very much, Mr. Turner.

Mr. Sansone, the International Longshoremen's Association.

Mr. SANSONE. Mr. Chairman, members of the committee, my name is John A. Sansone, Jr. I live in Gretna, Louisiana, and I am currently the director of 11 inspectors of foreign flag ships now working in the United States on behalf of the International Transport Workers Federation, an international labor secretariat that includes the U.S. maritime unions. I want to thank you for providing me with the opportunity to speak to you on matters that have been an important part of my working life.

I began my career while still a student in 1953, working on a tugboat, and in 1963, I became a crane operator on the docks in the Port of New Orleans for 17 years. From the beginning, I took an active role in my local union, the International Longshoremen's Association, serving as a business agent, organizer, and negotiator.

Having operated in an environment governed by a well-defined set of laws, the National Labor Relations Act of 1934 and its later amendments, I appreciate the importance and value of having a legal framework to guide the course of labor-management relations, even if I sometimes find fault with those specifics of the law itself. As a worker and as a representative of workers, I also appreciate the government's role in regulating levels of pay and hours of work through the Fair Labor Standards Act.

American workers, including American seamen, are permitted certain rights and subject to certain restraints regarding their ability to organize themselves and to bargain collectively under the National Labor Relations Act. Their efforts to do either are not grounds for punishment or dismissal, and workers are protected from retaliation if they file charges against their employer for violating the Act.

Protection from retaliation is crucial since some employers do not hesitate to seek retribution when employees make use, especially successful use, of the law. Shipowners and operators are no exception, and they often have the support of foreign governments in their efforts.

My work has given me far too many opportunities to see what may happen to workers who work without such protection. When my union duties were expanded to include the inspection of foreign flag ships in 1986, I was able to learn firsthand of numerous cases of exploitation and ill treatment. New examples arise almost daily, with only occasional success in winning any kind of relief. Furthermore, I am, unhappily, aware that countless instances go unnoticed and unreported.

But, one does not need to be a union official, only someone with a keen eye and a concern for people, to observe that foreign seamen on ships entering United States ports are often forced to perform their jobs under unsafe and unhealthy conditions and that they often act in ways that suggest they are fearful of the ship masters they work under.

I will limit my testimony to some of the typical cases that I have run into on tanker, container, and bulk cargo ships, but I am fully aware that passenger cruise ships are the source of many more instances of exploitation and abuse. Before mentioning specific cases,

let me give you a brief explanation of the different types of mistreatment these seamen face.

I testified on this subject on October 25, 1989, describing the situation which prevails regarding the treatment of seamen on foreign flag ships that operate in U.S. trades. This situation has not improved since that time. In fact, it has worsened. The types of abuses I described then are even more prevalent now.

First, there are hundreds, even thousands, of examples of poor health and safety conditions. On long voyages, food that is of poor quality is often stored improperly, leaving the crew with the choices of eating spoiled food or nothing at all. Water stores are not replenished and are easily contaminated, leaving seamen to pray for inclement weather so that they can collect rainwater for drinking, bathing, cooking, and washing. Living quarters are unbearably cramped and basic amenities almost non-existent.

The condition of the ship itself is a source of worry to the crew. The owner or agent who has no concern for the well-being of the crew and willingly cheats them is not likely to spend money on maintenance or the safety of the ship. Ships are likely to be undermanned, and the seamen who are on the crew are almost certain to be forced to work long hours, at sometimes dangerous jobs.

In return for those efforts, foreign seamen may be the victims of wage cheating. A ship may have been a party to legitimate agreements about pay, hours, and working conditions in the form of ship's articles, employment contracts, or labor agreements, but the ship master will avoid honoring those agreements by keeping two sets of books. One will reflect the wages truly owed, while the other lists the wages actually paid. The real pay scale may be less than $1 per hour. Seamen are sometimes forced into collusion with this chicanery, being made to sign the false documents as well as the real wage receipts.

I have even run into cases where ship captains or manning agents have anticipated being caught cheating and being forced to pay back wages and penalties to the crew. They have prepared themselves for this possibility by making it a condition of hiring that the crew members sign documents promising to repay the company, the manning agent, or government authorities any money that they gain from attempts to get their justly earned wages.

Unfortunately, very few seamen can respond to these types of situations by simply quitting or moving on to a ship where the conditions are better. It is a measure of the fear these seamen endure that they knowingly sign papers documenting how much they are being cheated.

You see, they have an even greater fear. The greatest fear is the retaliation they may suffer if they complain or seek help. A seaman is certain to be far from home, an alien subject to immediate arrest, with a family dependent on his pay, however meager it is. Having no job and being abandoned in a foreign country is even worse than working for an employer who cheats, abuses, and lies.

Now for some specific cases. Each case will not include all the types of mistreatment I have just described, but each has one aspect that provides strong evidence of the need for H.R. 1517.

I must omit ship names and names of the crew members. They remain fearful of reprisal, including death, even years after the events have taken place. And, in fact, I believe that they could still be subject to retaliation in the form of blacklisting simply because they are mentioned in the record of this hearing.

First, let me discuss the very first case that I was involved in as an inspector on foreign flag vessels. The owner of this ship had no concern at all for the welfare of the crew. His intention was to load his old, possibly unseaworthy vessel, with scrap, sell the ship for scrap as well, and abandon the crew.

The crew of the ship was comprised of six Sri Lankans, two Pakistanis, two Indians, and one Chilean. They were subjected to all the types of mistreatment of foreign seamen that I have described. The captain was very much aware that the conditions were intolerable because he disabled the radio to prevent the crew from communicating with anyone on shore. Furthermore, he falsely accused the crew of wanting to jump ship. He used this as an excuse to post an armed guard to prevent anyone from going ashore to make a complaint.

By means of subterfuge, one crewman managed to leave the ship. The letter he brought ashore will be submitted for the record. This crewman found a policeman and notified him that he and the rest of the crewmen were being held captive. In time, word of the situation reached me, but things did not go well for this brave seaman. The captain was able to determine who had escaped his ship. The seaman was beaten and sent home without pay. The other crewmen were more fortunate. They eventually received all the money they had contracted to work for.

The second case involved wage cheating and an attempted cover up. I will submit for the record a copy of a statement signed by some of the crew members. Identifying information has been blacked out, but the wage rates show that crew members were paid as little as one-third the amount due them by their signed employment contract. The crew was forced to surrender or destroy these contracts for they could not be used as evidence. One member told the ship manager that he had thrown away the contract, when in fact he held on to it. This provided the crucial piece of evidence that led to the settlement for back wages.

H.R. 1517 includes language that covers "factory" or production ships. These ships manufacture or process goods for sale just as a land-based factory would, but their status as a foreign flag ship, anchored offshore and docked in port, exempts them from most all U.S. laws.

One such ship, anchored near Jacksonville, Florida, had been busy making cement and transporting it to an onshore cement silo. Along with two sister ships, it often parked for weeks at a time in the St. John's River. Its Honduran crew was provided little or no drinking water, and much of their food was spoiled. Trash accumulated for weeks at a time, as a photo provided by the Jacksonville port chaplain shows. Even worse, the ship's hold, where the crew labors to manufacture the cement. Within 5 minutes, the flimsy protection given the crew against the choking dust is useless.

One crewman, at the suggestion of the port chaplain, complained to the Coast Guard. The Coast Guard is supposed to conduct inspec-

tions of the living and working conditions on board ships, a recent innovation under a convention of the International Labor Organization, ILO 147. But the Coast Guard is new at this job, and precise standards are not available to decide when violations occur. The Coast Guard issued no citations. The result was that the crewman was fired for making the complaint.

A second complaint was made by the port chaplain and not the crew, in order to protect them from reprisals. When the Coast Guard notified the ship captain that they were returning to the ship for a second inspection, the ship sailed into international waters, out of the reach of U.S. authorities.

I think that there is a great deal of symbolism in that act. Foreign flag ships can simply sail away from responsibility for their actions. When it comes to U.S. labor laws, there is not even a need to leave our shores. The water by the dock is no different than the water 200 miles out.

Today, I have only been able to give you the briefest of indications of the size and nature of the problems faced by foreign seamen. I wish that you could somehow have witnessed one-tenth of what I have seen. I have devoted my life to trying to help those who are victimized by shipowners and managers. They have so little going for them. H.R. 1517 would truly make a difference.

Thank you, Mr. Chairman, for allowing me to speak.

Chairman MURPHY. Thank you very much, Mr. Sansone.

Mr. Thomas Schneider, Restructuring Association.

Mr. SCHNEIDER. Thank you for allowing me to testify today. First of all, I would like to make a slight correction. I am here as a counsel to the AFL–CIO Maritime Committee and as general partner of the law firm of O'Connor & Hannan, not of Restructuring Association.

Chairman MURPHY. Thank you very much.

Mr. SCHNEIDER. I have a formal statement that I would like to have submitted for the record, and then I would like to make a few summary comments and provide a very small amount of pretestimony rebuttal of some of the comments we have had.

Chairman MURPHY. We appreciate your summarizing it. Without objection, your entire statement will be admitted as part of the record.

Mr. SCHNEIDER. Thank you again.

The case for this legislation has been made. You made that reference in your introductory comments. First, in the form of H.R. 3283, there were hearings before labor-management relations subcommittee, and then in the form of H.R. 1126, this committee, under your leadership, held hearings in the last Congress.

In these previous hearings, the abuses have been very well documented by John Sansone and others who have come in. Obviously, not every ship that sails the sea and that comes to the United States abuse them. There are some very responsible companies out there. But as in the case of the need for many laws, there are many companies and many ships that are taking advantage of the current situation. That is what this law is really directed at.

To the extent that people come back and say they are good owners, we readily accept the fact that there are good owners and responsible ship captains. What we find, and I think it has been

very clearly documented, is a pattern and practice that exists on the seas where ships flag in certain nations—Liberia and Panama are examples of two—and take advantage of the fact that those countries do not closely regulate the activities on those vessels.

The second need that has been clearly articulated is how the loopholes that exist in American laws and the whole nature of the international maritime system has led to the destruction of the American fleet. Basically, what it gets down to is a very simple concept. If you are going to subject some ships to a full regulatory system, and you are going to say to other companies that you are not subject to any regulation, obviously the ones that are not subject to regulation are going to have a competitive advantage.

It would be a little bit like saying to Toyota that because you are a foreign company and you do business on an international marketplace, we are not going to subject you to U.S. laws, even though you operate in the United States. However, Ford and General Motors, because you are American companies and are operating in the United States, are going to be subject to the full force of American laws.

To the extent that we want to eliminate all laws and return to the state of the world 200 years ago, then everybody is going to be on a level playing field. However, most of the developed world has said, "No, we are not going to do that. To the extent that you are going to do business within a particular country, then you are going to be subject to the laws." The way the maritime system is operating is really the way it operated 200 years ago.

What you have is a system where certain vessels are flagging out in a really meaningless way. For instance, Liberian Flag Systems is a subsidiary of an American insurance company. It operates out of Northern Virginia. There is really no tangible link to the nation of Liberia. By operating that way, flagging there, you basically have this loophole in the American system, and the ships are taking advantage of that.

One step to try to close that loophole was the signing of certain international treaties. Congressman Fawell accurately pointed out the existence of ILO 147. I think that if you look back at the records, and if you listen to the statement of Mr. Sansone today, what is very clear is that those international treaties really are toothless.

To the extent that a seaman on board one of these vessels tries to exercise his rights under the treaty, tries to get inspection, there is absolutely nothing that prevents a shipowner from firing that individual. Obviously, there is a tremendous power discrepancy. You have the owners who hire these individuals, and you have poor seamen from Third World countries who really have no recourse. If they are discharged, they are sent home and, in many cases, are blacklisted. So as a consequence, everybody who sails quickly knows that the existence of ILO 147 does not have a lot of meaning, because as soon as they try to exercise their rights under the treaty, they are going to be discharged, and their employment means more to them.

The second major point that I want to raise in summary is that the legal right of Congress to regulate the internal workings of these vessels is clear. The Supreme Court has made extremely

clear that the Congress has a full right to do this, and Congress has repeatedly done so in the past. As Mr. Turner pointed out accurately, the 1990 oil pollution act clearly regulates the hours of work of employees, which is about as meaningful an issue in the internal operation of a vessel as you can possibly get.

The third point is that the legislation that has been proposed by Congressman Clay is one that is really designed to solve the problem. It is very much of a rifle shot approach. In the past, the American-controlled shipowners have complained that in its previous life, in H.R. 3283 and H.R. 1126, it discriminated against American-controlled vessels and left their competitors, who are controlled by foreign owners, a competitive advantage, and it would destroy the American-controlled fleet.

What has happened is, Congressman Clay has rewritten the law to apply equally to all vessels that do business in the United States. By so doing, he has eliminated that arguably unfair treatment of American-controlled vessels.

The way the language is currently written, it applies to any vessel doing a reasonable amount of business in the United States, to the extent that the flag, the ownership, and the crewing do not correspond. To the extent that you have a British-flag vessel that has a predominantly British crew and a British ownership, then this law would not apply. The sense is that in that situation, Great Britain would have a strong enough interest that its laws would clearly apply, and they would really take responsibility for managing the vessel.

The breakdown in the international maritime situation has come when the ownership and flag become totally divorced. The crew members are not from the country, and at that point of time, the flagging country really has no interest, other than the revenue that comes from the fees it collects on an annual basis. It really has a minimal responsibility for what is going on, on the vessel.

The language of H.R. 1517 does not treat the American-controlled vessels differently any more. It is basically saying: to the extent that we know a country is going to have a strong interest in the management of the vessel, we will exempt it; we will leave it to that country to regulate. To the extent that there is a disconnection between the ownership, the crew, and the flag, then that is really a vessel that is stateless, and the United States is going to exercise its clear legal right to regulate the activities on board that vessel.

Cargo vessels have to make a basic decision whether they are going to trade with the United States or not. If they do not trade with the United States, then they are not going to be subject to American laws. In dealing with one of the questions that Congressman Fawell has raised in the past, and he mentioned in the introductions today, is the enforceability issue. To the extent that there is a violation and a vessel chooses to leave the United States and never come back to the United States, it is unenforceable. There is no question about that at all.

It really becomes fairly similar to a Mark Rich, who came into the U.S. financial markets, committed all sorts of securities abuses, and then removed himself to Switzerland and is outside the reach of U.S. laws. Obviously, we cannot enforce our criminal code on

somebody who is not within the jurisdiction of the courts. But to the extent that they come back into the United States, then they are in fact voluntarily submitting themselves to the jurisdiction of the U.S. courts and will be well within the reach of the NLRB or the Department of Labor and the Fair Labor Standards Act.

When we look at the passenger industry, there are all these threats that the industry will move out of the United States. This is highly problematic. First of all, the customers are Americans. Over 95 percent of the people who sail in the cruise industry are American citizens. You get this picture that all of a sudden, they will move out of the United States. If their business is in the United States, they are still going to have some connection with the United States.

The idea is that they will move to a foreign port and operate there and just fly the American consumer to this foreign port. There is a problem there. You do not just spontaneously set up a cruise industry. There is a need for a very large infrastructure. We have that infrastructure in the United States. It is part of President Clinton's whole plan and his emphasis on infrastructure: if you have an infrastructure, then that attracts industry.

We have done some research in looking at some of the alternatives. If you look at the major alternatives, it is either Bermuda or the Bahamas. They are really limited to handling just a handful of vessels at a time. In no way can they handle the capacity of some place like Miami. If you look at the West Coast, it is also similarly limited. So when you get down to it, because of both the customers being based in the United States and the infrastructure being based in the United States, and there really not being an alternative infrastructure system elsewhere, there is no competitive alternative.

What you have is a hollow threat of this business moving out of the United States. If they all of a sudden find that the Latin Americans are interested in going into the cruise business, then they can move away. At that point of time, they are essentially saying, "We don't want to do business with American citizens." The whole nature of the competitive marketplace is such that as long as there are customers, there are going to be suppliers.

Another argument made is that the whole idea that simply because a vessel sails under the United States, it is not a reasonable basis for extending U.S. law. It is interesting, that flies directly in the face of well-established legal doctrine. The standard legal principle is: to the extent that you do business in an area, to the extent you have contacts, that is a justifiable basis for the exercise of jurisdiction.

It is also important because, to the extent that they are coming into the United States, they are benefiting from the U.S. system. They are benefiting from U.S. dollars, they are benefiting from the entire economic structure of the United States. At that point of time, fairness alone argues for saying that consequently, if they are going to benefit from doing business with the United States, they ought to be subject to American law.

Finally, simply saying that because the existing system is the way it is, we ought to continue to live with it is essentially saying that despite the fact that there are all these abuses, despite the

fact that it has destroyed the U.S. maritime industry, we are going to allow this to continue because that is the way it is. If that attitude had been taken, the United States would not have had a Revolution 200 years ago, and we would not have done many other things, where we have taken the lead in the world in promoting the rights and responsibilities of modern democracies.

From that perspective, I appreciate the arguments of the status quo and the history, but when you look at what is going on in the industries, if you look at the exploitation that is taking place and the advantage that is being taken from the American economy, I think you have a fairly compelling argument for making changes.

Thank you very much.

[The prepared statements of Louis Parise and Thomas J. Schneider follow:]

LOUIS PARISE

Mr. Chairman, we very much appreciate your decision to again hold hearings on this important legislation. We also appreciate the efforts of Congressman William (Bill) Clay, and yourself on behalf of merchant seamen.

We represent America's oldest and largest maritime union consisting of licensed and unlicensed merchant mariners onboard U.S.-flag ships in the domestic and international trades. The AFL-CIO Maritime Committee was established in 1938 to give American seamen a voice in our Nation's Capitol.

We strongly support H.R. 1517. This bill would extend the coverage of the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) to the following types of nonliner vessels regularly engaged in the U.S. foreign trade that are not at least 50 percent owned, manned and registered in the same country:

-- Vessels regularly engaged in transporting liquid and dry bulk cargo.

-- Cruise ships.

-- Vessels engaged in carrying cargo from large ships anchored in nearby international waters to U.S. ports ("lightering") or otherwise acting as a shuttle.

-- "Factory" or production ships that manufacture or process goods for sale just as a land-based factory would, but which use their status as a foreign-flag ship anchored offshore or docked in port to exempt themselves from most U.S. laws.

Currently, hundreds of foreign-flag vessels do business in the U.S. market while operating primarily out of U.S. ports. For many of these vessels, the United States is their exclusive

place of business. Indeed, some of these vessels never even leave U.S. docks. These ships carry in excess of 90 percent of the U.S. passenger trade and in excess of 50 percent of the nonliner waterborne foreign cargo trade. (In the tanker trade, U.S.-flag tankers carried less than 3 percent, and in the nonliner dry bulk trade, U.S.-flag ships carried less than 2 percent of the trade.) Not only do the companies owning these vessels pay little or no U.S. corporate taxes, they also evade U.S. labor and other laws to which American companies are subject. This has put American workers and companies at an unfair competitive disadvantage.

We think it is time to start closing these loopholes and this legislation is an excellent beginning. There are several reasons why we support H.R. 1517. It would:

-- establish a minimum level of fair treatment and wages for the seamen on "runaway-flag" ships that carry the overwhelming majority of our waterborne foreign trade, and by so doing, would make it possible for U.S.-flag interests to compete, thereby creating jobs for American seamen;

-- eliminate the abuse and mistreatment of the seamen on the affected ships;

-- improve safety conditions on the 100-plus passenger ships in the U.S. trade;

-- bring our labor laws into conformity with those of other developed countries;

-- enhance port state control; and,

-- extend similar-type workers' rights that are in other U.S. laws.

It is hard to really comprehend what is actually taking place behind the scenes, so to speak, with our U.S.-flag merchant marine and why it has all but disappeared.

We all know that U.S.-flag ships carry approximately 3 percent of our trade while "runaway-flag" operators--those who have registered their ships in open registry countries such as Panama and Liberia--carry 50 percent or more.

Since these "runaway" operators are allowed to set up shop here and circumvent all U.S. labor laws, the American-flag maritime industry and labor have been forced into fighting a competitive battle they cannot win.

Today, 80 percent of all unlicensed seamen on merchant ships of the world are from Asia, primarily Southeast Asia. This is not because they are the best seamen, but because they are more susceptible to abuse without recourse, as you will hear from other witnesses.

In general, the only major cost of running a ship that is not fixed is the labor cost. American seamen's wages represent approximately 12-15 percent of total operating costs of an American-flag ship. This is down from approximately 30 percent some 30 years ago. And I want to emphasize that this cost represents the smallest labor cost per total operating costs for any mode of transportation in the U.S.

Foreign seamen can always undercut us, just as they would take over American airlines and railroads if our government's

policies permitted them to do so. Their labor costs represent 3-4 percent of total operating costs on "runaway-flag" ships, and there currently is an effort to lower these costs even further.

The ILO minimum wage for an able-bodied seaman, a skilled unlicensed rating, is now $356 per month--no overtime, fringe benefits or hourly limitations of work. And worse yet, half of the ships of the world do not even comply with the ILO minimum wage provisions. In comparison, the U.S. minimum wage of $4.25 per hour translates to slightly over $1,000 per month for a 56-hour workweek.

The decline of the U.S.-flag merchant marine began with the decision of the Supreme Court in 1957 which stated that U.S. labor laws, as written, did not apply to American-owned "runaway-flag" ships. The practical effect of this ruling was to allow foreign-flag ships to set up shop in the States and do business with American customers without having to comply with our country's laws.

This Court decision did say, however, that Congress had the authority to extend the labor laws to these ships. As a matter of fact, there were several laws in existence at the time that extended U.S. laws to foreign seamen when they were in American ports.

We do not believe that this is a partisan political issue. I say this because both Democrats and Republicans have

cosponsored the bill. Rather, this bill is about common human decency and fairness.

No meaningful connection exists between a "runaway-flag" ship and the country whose flag it flies. The owners are not from that country. There is no meaningful number of citizens from the open registry country on any of the ships registered in their country. What possible sovereignty exist between a ship and the flag it flies if it is not at least 50 percent owned and manned in the country of registry?

This is best illustrated by the following quote taken from the 1992 Annual Report of the owners of the Liberian registry--The United Services Life Insurance Company (USLICO) of Arlington, Virginia:

> "LIBERIAN INVESTMENT. USLICO has owned the majority shareholder of The International Trust Company of Liberia (ITC) since 1985. ITC operates a banking business in Liberia and administers Liberia's maritime program. In 1988, as a result of uncertainty regarding control of ITC and the ultimate realization of further profits from Liberia, USLICO suspended recognition of earnings from this subsidiary. USLICO's investment in ITC has been recorded on a deconsolidated, cost basis since that time. Civil war broke out in Liberia during 1989, and the country's political situation has been unstable ever since.
>
> During 1991, the political situation evolved into a stalemate condition with no substantial prospects for settlement in the foreseeable future. Given this development, the Company reassessed the net recoverable value of its investment and determined, as a result of this further uncertainty regarding Liberia, that it would be prudent to write off the net remaining value of $7.2 million.
>
> The political and economic environment in Liberia combined with USLICO's ability to realize cash earnings

> will determine future treatment of income generated by ITC. We do not anticipate that future developments related to ITC will have a significant effect on the financial position or operating results of USLICO."

Some time ago, USLICO announced that it had won the contract to operate a second "flag-of-convenience" registry, this one for the Republic of the Marshall Islands. As the Journal of Commerce described it in a news analysis on October 2, 1990:

> "As a practical matter, the contract means the legal and financial aspects of the two competing registries will be handled by the same people in New York and Virginia."

Mr. Chairman, while these "runaway-flag" operations are financially lucrative to those who own and operate the ships, and to a select few in the country of registry, they are a haven for those who cheat and mistreat unprotected seamen. And because they continue to operate as if encouraged by the U.S. Government, they are eliminating our U.S.-flag merchant marine.

The simple facts are that "runaway-flag" registeries are a sham perpetrated upon the American seamen and the U.S.-flag merchant marine by the "runaway" operators and our own Federal Government.

The objections voiced earlier by Japan and some European countries that the United States should not extend its laws to their flag ships is less valid now than in the prior version of H.R. 1517 since the legislation does not apply to any ship flying their own national flag.

We have analyzed how the labor laws of other developed countries apply in a similar situation.

Legal analysis is difficult because the evolution of labor laws and the treatment of unions in society differs from country to country. The approach to labor law differs as well. In many countries most actions taken by labor organizations in furthering their aims are permitted unless specifically prohibited. There need not be a statute on the books. U.S. labor law takes the opposite tack. Unless an action is permitted by law, it is prohibited.

However, the short answer to the question is that in the majority of the European countries, the right of collective action on the part of the crew and the rights of the domestic union to assist in organizing is much more liberal than what is being legislated in H.R. 1517.

You will hear ridiculous claims from "retaliation" to "moving the operations offshore." The threat of retaliation is a joke. How could the Virginia-based Liberian registry retaliate?

The threat by the passenger ship operators to move offshore is also baseless. Where could they move? The only possible places to move to would be Bermuda or the Bahamas. Bermuda can accommodate three or four ships at one time, and the Bahamas can accommodate possibly a dozen more.

It is, therefore, not possible to fit approximately 130 ships into these locations, let alone the needed airport facilities and other infrastructure to handle approximately

ten million people or the other services associated with the operation.

Foreign-flag cruise ship operators to whom this legislation would apply are now claiming that the application of the minimum wage and overtime provisions of the FLSA would raise their labor costs so high they would be forced out of business.

This assertion is about as absurd as the other claims. First of all, there is no overtime coverage in the FLSA for seamen. Secondly, the majority of the seamen on a passenger ship are in a tipped category and would be paid half of the $4.25 an hour minimum, or at $2.13 an hour.

The last report filed with the Securities and Exchange Commission by the largest cruise ship operator in the U.S. market, Carnival Cruise Lines, indicates an entirely different picture. This report shows a 22.5 percent return on equity. The following was also contained in Carnival's report:

> "CCL believes that it is exempt from U.S corporate income tax on the U.S. source income from its passenger cruise operations, because it qualifies as a controlled foreign corporation."

To most reasonable people, a company with this return, paying no taxes should be able to pay its employees at least two dollars an hour.

Your Committee heard in 1991 that the foreign-flag passenger ships are safer than American-flag passenger ships. This was presented as a conclusion reached by American Bureau of Shipping.

To the average person this could mean that these foreign-flag passenger ships could not get any safer. Not so, says the Government Accounting Office in a report #RCED-93-103 -- "Coast Guard, Additional Actions Needed to Improve Cruise Ship Safety" issued in March, 1992, and characterized by Lloyds List as "...A scathing indictment of safety practices based on its findings during a one-year probe of the foreign-flag cruise industry..."

Our government has voiced a concern in the North American Free Trade Agreement for the desire to raise the Mexican workers' labor standards. Mr. Chairman, Mexican workers are far better off than the many seamen who work on the ships that carry the majority of U.S. foreign commerce.

It really is a national disgrace and embarrassment for our government to be promoting and encouraging this type of sham operation which has cost Americans thousands of jobs at a time when the unemployment lines are stretching longer and longer.

We strongly urge adoption of this important legislation.

Thank you.

THOMAS J. SCHNEIDER

Mr. Chairman, on behalf of the AFL-CIO Maritime Committee, I wish to thank the Committee for this opportunity to explain the workings of, the need for and the background of H.R. 1517. I am accompanied by Talmage E. Simpkins, Executive Director, AFL-CIO Maritime Committee.

Purpose of H.R. 1517

H.R. 1517 is intended to rectify the inequity that foreign vessels competing in the U.S. foreign trade are are not covered under the Nation's labor laws, Because of this legal loophole, United States flag vessels are subject to unfair competition. As currently written or interpreted, our labor laws allow foreign flag ships to set up shop here, doing most or all their business out of U.S. ports and serving U.S. customers while avoiding the reach of American labor laws solely because of their foreign registry. They can ignore the obligations and responsibilities our laws impose on the U.S. flag vessels with which they compete.

The exclusion of foreign flag vessels from the jurisdiction of the National Labor Relations Act denies foreign flag crew members the guaranteed right to engage in concerted activities for their mutual aid or protection. These activities are often necessary to enable foreign crews to successfully avail themselves of existing U.S. laws, such as those which protect foreign seamen from being cheated of their rightful wages, and international agreements, including International Labor Organization conventions ratified by the U.S., such as ILO 147.

The exclusion of foreign flag vessels from Fair Labor Standards Act coverage means that most foreign flag operators with regular operations in the U.S. are free to ignore the minimum wage and hours standards established under that law.

The proposed amendments to the NLRA and FLSA extending those laws to certain foreign vessels would close the existing loopholes in U.S. labor laws. The minor changes made by H.R. 1517 will extend those laws to the majority of foreign flag vessels competing in U.S. trades.

Passage of H.R. 1517 would extend coverage of the NLRA and the FLSA to the following foreign flag vessels:

- any non-scheduled ("non-liner") cargo ship regularly serving the foreign trade of the United States, unless it is majority owned, controlled and crewed by citizens of the flag state.

- any cruise ship regularly carrying passengers to and from a U.S. port, unless it is majority owned, controlled and crewed by citizens of the flag state.

- all "factory" ships that produce or process goods for sale in the U.S. and all ships that carry cargo between ships in international waters and vessels, ports or places in the U.S.

Status

The predecessor of H.R. 1517, H.R. 1126, was first introduced as H.R. 3283 by Rep. William Clay, Chairman of the House Labor-Management Subcommittee of the Education and Labor Committee on September 18, 1989. Hearings by that committee were held on October 25, 1989. The legislation, with an amendment, was approved by the Labor-Management Subcommittee, after consideration on June 20, 1990. The Labor Standards Subcommittee approved the bill, as amended, on July 18, 1990.

A statement of opposition from Undersecretary of Labor Roderick DeArment, representing the Bush Administration, was presented to the Labor-Management Subcommittee at the time of its vote, but Administration arguments were undercut and contradicted by Administration support and approval of the Oil Pollution Act of 1990, which, like H.R. 1517, contains provisions that regulate "internal order and discipline" on a vessel, including regulating the hours of work.

On February 27, 1991, Rep. Clay re-introduced the legislation. Jurisdiction was assigned to the Education and Labor Committee and the Merchant Marine and Fisheries Committee. The Labor Standards Subcommittee held hearings on October 10, 1991. The bill was approved by the Subcommittee on June 10, 1992.

A Senate version of the Bill, S. 3235, was introduced by Senator Pell on September 15, 1992. S. 3235 redefined the scope of the bill by extending coverage to all vessels that are not majority crewed, owned and controlled by flag state citizens, and changed the focus on cargo carrying vessels to exclude liner-type vessels.

On March 30, 1993, Rep. Clay introduced H.R. 1517, with twelve co-sponsors.

Background

American workers, including American seamen, are permitted certain rights, subject to certain restrictions, regarding their activities to organize themselves and to bargain collectively under the National Labor Relations Act. Their efforts to do either are protected from punishment or dismissal; they may file charges against their employers for violating their rights.

Foreign crewmen, on the other hand, are subject to many types of mistreatment, including extremely low pay for long hours of work. This abuse is made worse by a pattern of wage cheating by which ship operators deprive crewmen of wages established by legal labor and employment contracts.

In addition, there are hundreds, even thousands, of examples of poor health and safety conditions on seagoing vessels. On long voyages, food that is of poor quality to begin with is often stored improperly. Water stores are not replenished or are easily contaminated, leaving seamen to collect rainwater for drinking, bathing, cooking and washing. Living quarters are unbearably cramped and basic amenities almost non-existent.

Crewmen are subject to retaliation when they attempt to correct or improve their situation. Many ship operators do not hesitate to seek retribution when employees make use, especially successful use, of those few laws that cover foreign crews. Very few foreign seamen can respond by simply quitting and moving on to another ship where the conditions are better. A seaman is certain to be far from home, an alien subject to immediate arrest, with a family dependent on his pay, however meager it is. Having no job and being abandoned in a foreign country is even worse than working for an employer who cheats, abuses and lies.

Legal Considerations

The ability of Congress to pass legislation affecting foreign entities and citizens has been established by its own past actions, expressly authorized by the Supreme Court of the United States, and recognized in agreements made among nations, including the U.S., under international law.

An exhaustive legal study of the issue established that:

1. Extension of the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) to foreign flag vessels is within the scope of powers of the Congress.

2. There is already a substantial body of U.S. law that is analogous to H.R. 1517 in its coverage of "foreign" entities.

3. The National Labor Relations Board and the Department of Labor can use available procedures and resources to enforce the provisions of H.R. 1517.

4. International law doctrine permits nations to regulate activities of vessels using their ports ("port state control"). See e.g., Restatement (Third) of the Foreign Relations Law of the United States (1987), hereinafter "Restatement," §§402(1)(b) & 502.

5. An increasing number of laws enacted to cover an increasing range of issues includes provisions that address the conditions of employment of foreign workers.

The Fair Labor Standards Act is expressly limited to seaman aboard "American vessels," defined as "any vessel which is

documented or numbered under the laws of the United States." Consequently, seamen employed by foreign flag vessels, even those owned or controlled by American entities, are currently excluded from protection under the FLSA.

While the Supreme Court has interpreted the NLRA as inapplicable to foreign flag vessels, it has also made clear that Congress possesses the authority under the Constitution to regulate such vessels operating in U.S. waters. McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 83 S.Ct. 671 (1963). Thus, there is no constitutional impediment to the Congressional exercise of jurisdiction over foreign flag vessels engaged in business in American waters.

Related Legislation

H.R. 1517 is consistent with the well documented interest of Congress in the protection of the rights of foreign workers contained in several pieces of trade legislation, and in the protection of our environment from the effects of oil spills and other dangers to our waters and shoreline.

Foreign seamen on foreign flag vessels are already under the protection of other U.S. laws. They are specifically covered by the Seamen's Wage Protection Provisions of the U.S. Shipping Code. 46 U.S.C. §10313 guarantees to seamen prompt and complete payment of wages on foreign and intercoastal voyages. Section 10314 prohibits unauthorized deductions of various kinds from seamen's wages. Seamen aboard foreign flag ships may sue in U.S. courts to collect wages withheld in violation of these statutory provisions. Southern Cross Steamship Co. v. Firipis, 285 F.2d 651 (4th Cir. 1960), cert. denied, 365 U.S. 869 (1961); Henry v. S/S BERMUDA STAR, 863 F.2d 1225 (5th Cir. 1989).

The most recent example of Congressional action in this area is the Oil Pollution Act ("OPA") of 1990. Despite the unique characteristics of the maritime industry, there was no hesitation by Congress to base its decision on the OPA on the merits of the legislation and the need for action. H.R. 1517 may be treated similarly.

The Oil Pollution Act of 1990 affects crew matters on board a ship by restricting the hours that seamen of all nationalities on U.S. and foreign oil tankers are permitted to work (limiting them to no more than fifteen hours per day or thirty-six hours in any seventy-two hour period).

The willingness of Congress and the Executive Branch to assert the authority of the port state is further evident in the requirement that the Secretary of Transportation evaluate the manning, training, qualification and watchkeeping standards of any nation whose vessel is involved in a significant maritime casualty in U.S. waters. A determination that a nation has failed to enforce standards results in a prohibition against any ships from that nation entering United States ports.

Enforceability of H.R. 1517 will not be a problem because of the requirements that covered vessels be "regularly engaged" in business in the U.S. The NLRB and the Department of Labor will easily be able to exercise physical jurisdiction over the vessels when the vessels return to U.S. waters. Moreover, both organizations have well established experience "piercing the corporate veil" to determine liability.

A wide range of other U.S. laws regulates foreign companies with contacts with the U.S. These other laws plainly demonstrate that the lack of regulation in the maritime industry is the exception rather than the norm.

American tax laws recognize and specifically regulate certain industries that are highly internationally mobile and can easily exploit the legal system to avoid regulation. Moreover, under the Tax Reform Act of 1986, foreign ships transporting cargo to and from the U.S. are now subject to a 4% tax on their U.S. source gross income. With this change, an appropriate portion of the income of foreign flag vessels is subject to U.S. tax laws.

Foreign private entities and governmental institutions have been required historically to comply with the registration requirements of the Securities Act of 1933 if they wish to issue securities publicly in the United States.

When Congress has found the activity of foreign flag vessels within United States territorial waters to be of national concern, it has acted to regulate these vessels and their foreign crews. In the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, Congress expanded the regulation of marine traffic within U.S. ports and territorial waters to address the growing problem of accidents involving tankers and other vessels.

Opposition to H.R. 1517

Opponents of H.R. 1517 make five basic arguments against the legislation:

1) The legislation is not necessary since an existing international agreement (International Labor Organization Convention 147) ("ILO 147") protects foreign seamen from abusive or unscrupulous ship operators.

Experience has demonstrated that the value and availability of ILO 147 to U.S. authorities is currently in question. But in any case, without the protection of the NLRA, foreign seamen are learning that asking the U.S. Coast Guard to conduct an investigation of health and safety conditions on their ships will lead to retaliation.

2) The legislation contravenes the concept of flag state control, which generally governs the affairs of seagoing vessels.

Over the past 20 years, the concept of port state control has been reflected in a significantly increasing number of national laws and international agreements. The exercise of jurisdiction in this legislation fits well with the current trend toward increased port state control as evidenced by the Oil Pollution Act of 1990, and is fully in accord with international law principles concerning the exercise of port state control over vessels serving the port state's trades. See e.g., Restatement § 402, Comment h.

3) The legislation would create diplomatic problems with our major trading partners by creating conflicts with the laws of other nations.

At hearings held before the House on the Port and Tanker Safety Act of 1978, witnesses expressed apprehension about the international implications of that bill. The concerns centered on possible friction with other countries that could be sparked by the U.S. imposing more rigorous maritime standards (i.e., standards beyond those set by the International Maritime Consultative Organization). The Congress, nevertheless, approved the legislation and the predictions of dire consequences in the international arena proved to be unfounded and no serious challenges were raised to the Act.

Predictions of dire consequences stemming from regulation of the affairs of foreign flag vessels have been made before, but no such consequences ever came to pass. In the 63d Congress debates on what was to become the Seamen's Act of 1915, the leader of the opposition, Senator Humphreys, said:

> Yet this vessel of a friendly nation that has in every way complied with her own laws and with her treaty obligations, with us will not be permitted to depart from our harbors until they have complied with the many provisions of this bill. Does anyone believe that any self-respecting nation is going to submit to such indignities? ... I say to this House today that if you place this law upon the Statute books and attempt to enforce it we will have war with Japan inside of 30 days. Cong. Rec. 63d Cong., 2d Sess., pp. 14354, 14355.

We did go to war with Japan -- 26 years later, but it was not over the Seaman's Act of 1915.

Analysis of the laws of the principal European maritime nations reveals that the approach being proposed here, i.e., allowing a limited right to collective action on certain foreign flag vessels with extensive U.S. operations, is a far more restrictive approach than generally followed in Europe. The changes proposed in H.R. 1517 are consistent with the practices of our major trading partners in Europe.

4) The legislation would not create jobs for Americans and in fact would hasten the "flagging out" of the U.S. shipping industry.

There is no expectation on the part of supporters that H.R. 1517 will necessarily create a single job for Americans or increase the ranks of union members by even a single member. Its intent is to close loopholes in labor laws that permit ship operators, if they choose, to exploit their crews. Doing so may well tend to create a more level playing field, but justice and equality, not economics, is the main rationale for this legislation.

The major difference between H.R. 1517 and its predecessor, H.R. 1126, is that H.R. 1517 does not limit its coverage to U.S.-controlled vessels. Under H.R. 1517, therefore, vessel operators have nothing to gain by transferring their fleets beyond U.S. control. This also means that opponents of the bill can no longer complain of discrimination in the application of the bill only to U.S.-controlled vessels. H.R. 1517 only contributes to a levelling of the playing field, because it treats all vessels equally.

Most ship owners and operators, U.S. and foreign, are committed to maintaining basic standards of safety and reasonable working and living conditions. Shipping companies which treat their employees fairly have nothing to fear from this legislation. Those owners of passenger cruise ships with stable, productive and experienced workforces providing first rate service have little, if anything, at stake. But ship owners who use foreign registries to avoid the laws and regulations of their own countries while taking advantage of our port facilities ought to be made fearful. If they are allowed to profit from access to our markets, including the human market of cruise ship travelers, they should not be permitted to exploit that access at the expense of their crews.

5) The legislation would harm our defense posture by reducing the number of ships available for the carrying of cargo during wartime.

As events in the Persian Gulf have proven, arguments about the relationship of foreign flag merchant vessels to the defense posture of the United States are grounded in political, military and economic realities that are far more relevant than the applicability of U.S. labor laws. Throughout the Gulf war, there were not enough American merchant seamen readily available to man our reserve merchant fleet. The need for foreign crewmen to supplement ship manning thus made the concept of an "American" fleet virtually meaningless.

In fact, reports surfaced of several instances in which foreign crewmen on foreign flag ships refused to perform their duties as their ships approached the war zone. O. Casey Corr,

"Ships with Foreign Flags Draw Criticism -- One Supplying Allied Troops Refused to Enter War Zone," Seattle Times, February 5, 1991 at p. A5. Low wages and uncertain treatment are not an inducement to foreign crewmen to help the United States carry out a wartime mission.

Summary

By passing this legislation, Congress can act to improve the situation of a badly exploited group of people, and in doing so, improve the competitiveness of American seamen and U.S. flag ships.

This legislation will provide foreign flag crewmembers on certain seagoing vessels the guaranteed right to engage in concerted activities for their mutual aid and protection so that they may avail themselves of existing U.S. laws, such as those which protect foreign seamen from being cheated of their rightful wages, and international agreements, such as ILO 147.

The legislation will also extend the coverage of the Fair Labor Standards Act to most foreign flag operators with regular operations in the U.S. These operators are presently free to ignore the minimum wage and hours standards established under that law.

Because the main purpose of "flagging out" is to escape the restrictions of legislation and regulation by registering a ship in a nation with few or no governing laws, the extension of U.S. labor law fills a vacuum rather than superimposing our notion of worker rights over that of the flag state.

The application and impact of the legislation is not novel, nor is it disruptive of international relations; it merely applies standards that govern in maritime as well as other industrial and commercial contexts. There is no legal or political validity to the argument that Congressional jurisdiction should stop at the water's edge. Many laws, most recently the Oil Pollution Act, which covers issues of ship safety and crew well-being, project U.S. concerns and interests into the world marketplace. Thus, the clear cut issues of economic fairness and social justice are paramount and persuasively argue for the passage of this legislation.

I thank you for your time and I would be happy to answer any questions.

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
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SUBCOMMITTEE ON LABOR STANDARDS,
OCCUPATIONAL HEALTH AND SAFETY

June 22, 1993

Mr. Thomas J. Schneider
1919 Pennsylvania Avenue, NW
Suite 800
Washington, D.C. 20006

Dear Mr. Schneider:

I want to thank you for testifying before the Subcommittee on Labor Standards, Occuptational Health and Safety on Thursday, May 13, 1993. Your observations and recommendations are very helpful to our Members during our deliberations on HR 1517.

You will recall that at the end of your testimony I requested that witnesses be available to answer any subsequent written questions we may have to further clarigy our legislative record. Toward that objective, I would appreciate your formal response to the following questions.

(1.) What is the likelihood that passage of HR 1517 would cause cruise lines which call at U.S. ports to transfer their vessel embarkation/disembarkation facilities to one or more other countries?

(2.) What would you expect to be the reaction of the EC countries to passage of HR 1517?

(3.) WHat would be the financial impact on the cruise industry operating out of the United States from passage of HR 1517?

(4.) Would passage of HR 1517 have the effect of causing an increase in cruise ticket prices to the travelling public?

Again, thank you taking time out of your busy schedule to appear before the Subcommittee hearing.

Very truly yours,

Austin J. Murphy

AUSTIN J. MURPHY
Chairman

QUESTIONS RE TESTIMONY OF THOMAS J. SCHNEIDER
ON H.R. 1517

1. What is the likelihood that passage of HR 1517 would cause cruise lines which call at U.S. ports to transfer their vessel embarkation/disembarkation facilities to one or more other countries?

We have investigated this possibility, and our conclusion is that it would be impracticable for cruise operators to move their operations elsewhere to service the U.S. market. Obviously, the purpose of moving to some distant destination would be defeated by the cost of furnishing the air transportation, while the inconvenience of the additional long flight would make the cruise package less attractive.

Three arguable candidates for relocation of the cruise operations would be Bermuda, the Bahamas and Grand Cayman. Bermuda has for many years strictly controlled the number of cruise vessels allowed in Bermuda waters, to avoid strain on its facilities and infrastructure. The ships currently serving Bermuda do so under 7 and 10-year contracts. The docking facilities are also subject to draft and length limitations. Based on the information we have received from the Bermuda authorities, it does not appear practicable for any substantial cruise operation to be shifted to that country, nor is it at all likely that the Bermuda authorities would agree to any substantial additional vessel calls.

The Bahamas has limited facilities which can accomodate no more than a few cruise vessels. While theoretically the extensive new facilities which would be required for embarkation/disembarkation might be built, the cost would undoubtedly fall to the cruise lines, and the infrastructure to service such a volume of passengers is simply not there.

Grand Cayman also strictly limits the number of cruise vessel calls. The Caymans are fiscally independent and there is no likelihood that their Government would agree to construction of any new facilities because of their impact on the environment, natural resources and the community.

Our research indicates there are no desirable locations outside the United States which offer a desirable, feasible location to establish the facilities necessary to service the U.S. cruise trade.

2. What would you expect to be the reaction of the EC countries to passage of HR 1517?

The political structure and situation in the EC is such that enactment of such legislation is not feasible at this time. Passage of HR 1517, however, would very substantially strengthen the ability of the EC to enact complementary legislation, and could very well give the impetus needed for the EC to do so.

3. What would be the financial impact on the cruise industry operating out of the United States from passage of HR 1517?

Information on the financial position of the cruise industry operating out of U.S. ports, which is publicly available, shows they are extremely profitable operations, due to their uniquely favored tax and labor situations. These operators have profitability cushions of such comfortable size that they could easily absorb any difference in labor costs which would follow from HR 1517 for operators with substandard wage and hour scales. The cruise operators in the U.S. market do not need perpetuation of sub-minimum wage and hour standards to continue their exceptional profitability.

4. Would passage of HR 1517 have the effect of causing an increase in cruise ticket prices to the travelling public?

Cruise vacations are purely discretionary purchases, despite their popularity. Vacationers have so many options to choose from that the demand for cruise travel is on its face very elastic, that is, responsive to price changes; therefore, it cannot be expected that the cruise operators would be able to increase their fares to cover the relatively small increases in operating costs that could result from the effect of HR 1517 if it becomes law. With their established fare structure in place, and faced with elastic demand in an industry with unusually high profitability, we do not foresee increases in ticket prices growing out of improvements in wage and hour conditions to acceptable levels. For these reasons, in our opinion, HR 1517 would have no real impact on cruise ticket prices, because marketplace discipline would discourage such impact.

Chairman MURPHY. Thank you very much, Attorney Schneider. I have one or two questions.

My first question is for Deacon Balderas. You were primarily addressing the cargo or fishing vessels. What percentage of those actually come into American ports and spend some time? I am wondering whether or not your complaints would be more addressed to the International Labor Organization, the ILO, where we could have a worldwide system. Is there a heavy trade of these foreign flag vessels coming into the U.S.?

Mr. BALDERAS. Are you speaking in terms of fishers?

Chairman MURPHY. Yes, the fishing industry.

Mr. BALDERAS. The fishing industry that I am most familiar with, that is still alive and well, seems to be out of the coast of Alaska. They have a large number of migrant workers, college kids and other such people, foreigners as well as Americans, who travel to Alaska.

Chairman MURPHY. Do they use the Alaskan ports as their principal port?

Mr. BALDERAS. Yes. They go out of the port of, I forget, Dutch Harbor and Anchorage, around that area. They do use Alaskan ports. They go out there thinking that they are going to earn money for college or earn money to survive with, and they are subject to tremendous abuses. Sometimes they are just deposited and forgotten and not paid at all, beside the indignities that they suffer at sea.

Of the other coasts, too. I am sorry I cannot give you the figures. The Alaskan waters are the ones that I keep hearing about, from our chaplain in Anchorage, Alaska, and from the other denominations.

Chairman MURPHY. Do you have chaplains or possible ships in these different ports? Do you have them in Florida? Do you have them in California and Alaska?

Mr. BALDERAS. Yes. We are on every coast, East and West, the Gulf Coast, and the Great Lakes. Also, we have someone in Honolulu and Pago Pago.

Chairman MURPHY. Would you provide the committee staff with a list of those? If we have members who would ever have an opportunity to visit those centers, I would like to encourage that.

Mr. BALDERAS. I would be very happy to.

Chairman MURPHY. Next I have a question of Mr. Turner. Attorney Schneider pretty much answered my question on the economic impact. One factor or matter that we have heard is that in the cruise industry, we would then lose a great deal of economic benefit if we attempted to disrupt the current cruise industry practice of foreign flag ships and foreign crews, their purchasing their goods here or stocking their ships here. What adverse economic impact do you see or do you not see?

Mr. TURNER. Mr. Chairman, we are talking about estimates of some 10 million U.S. customers that originate in this country to get aboard these vessels. That is a huge amount of supply. We submit with the argument that the infrastructure in some of these other areas could not possibly provide the support that you need. In addition to that, U.S. flag vessels can take over this market. This can turn into a U.S. flag venture, and it could provide the stimulus for

an industry that is now being sopped off by the foreign flag interests. To answer your question, the economics on this bill would tilt very severely toward the U.S. economic interests if we were to pass it.

Chairman MURPHY. At this point, I am going to ask Mr. Andrews to take the Chair for a little time. I have to get over to the floor quickly for a minute. Mr. Andrews, I give you the gavel.

Mr. ANDREWS. [presiding] Thank you, Mr. Chairman.

We will go to Mr. Fawell.

Mr. FAWELL. Thank you, Mr. Chairman.

Much of the testimony, understandably, was based on moral grounds, and I certainly respect that. On that, I have not a great deal of knowledge. As Mr. Schneider has indicated, there are responsible foreign flag operators. I do not know what the breakdown is or how many are the deplorable types to which, Deacon, you referred.

I am not going to try to get into that area, except to suggest, as I felt was possibly the case the last time we discussed this bill, that we need implementing legislation to enable the Coast Guard to be able to fully do the job under ILO 147 and the various treaties that this Nation has entered into in regard to international labor law on the high seas. I would be interested in your reactions, and I am going to be submitting written questions to you in that regard.

I have concerns about enforcement of the legislation. As it was mentioned by Mr. Sansone, I think the Coast Guard is rather new at this, and they are perhaps having problems in regard to investigating ships. Most importantly, I will be very practical. What we are talking about here are mobile businesses: ships. They are on the high seas most of the time.

If this country decides to abandon the international treaty route, which has always been the basic mode of handling the maritime law, insofar as international shipping is concerned, obviously all the other countries will want to do the same thing, too. No matter which port you go into, you are suddenly a member of a different union. I do not know what happens if a strike occurs on the high seas, if we ship a submarine out there real quickly to take care of it or not.

I see almost insurmountable problems in regard to every nation going on its own and all kinds of problems in that regard. I am speaking strictly as a layman; I come from the Midwest. The Great Lakes are there, but this is not my field of expertise. I do ask the question: What would be the results of this, in terms of the people involved, in terms of the ports, and the people who are the port authorities, for instance? We will have some testimony in that regard.

I cannot help but believe that there will be diversion of the cruise ships. I will let the people testify on that; they are better able to testify in that regard. It is very easy to fly into the Bahamas and fly out. I think that is exactly what the foreign flag cruise ships will do.

I also ask the question because I do not know why liner vessels are suddenly exempted from this law. Maybe somebody can explain that to me. Insofar as the producers and the exporters, especially of the grains and agricultural products in America, just pennies make a big difference.

In light of the fact that the U.S. flag ships do not operate because they priced themselves out of the market, and it is all international flag ships that are involved in the cargo area, in the bulk transfer, I am thinking in terms of will these flag ships, if they realize that they would be subject to U.S. labor laws, simply go from Boston to Halifax with regard to the port of choice?

But even more importantly than that, as far as exports are concerned, what are the producers going to do? If you can switch to Canadian wheat or Canadian grain, and you do not have to go through all this, or any other country in the world, why bother to necessarily buy American wheat? This is a global economy.

It seems to me that whereas the feeling is that the U.S. flag ship unions are going to gain business, I do not think you will. I think diversion will take place. Surely, in the cruise business, and as the bulk cargo business is concerned, I think that you may force a number of those foreign flag ships—many of which are American, because they know they cannot compete internationally as a U.S. flag ship—out of business. I do not see how the business is going to flip to the U.S. flag ship.

You will have an awful lot of people who will say, "We will trade with countries and pick up exports from countries where we do not have to go through all of this. Why bother to buy American wheat when you can go to Halifax and not have to go through all this?" Is that not a practical result of what we are talking about?

Mr. SCHNEIDER. I think that if you look at it in isolation, the line of reasoning that you just went through is extremely plausible. I was in Australia, which is one of the world's largest wheat producers. I think they may be third or something like that, after the United States and Canada. I was meeting with their minister of industrial relations, who is now their minister of trade. His name is Peter Cook. We were talking about this particular legislation.

One of his early portfolios, when he first went into the government in 1982, was the maritime industry. As we talked about this proposed legislation, his comment was that it would revolutionize the world maritime industry. The United States is an 800-pound gorilla. To the extent that the United States makes a change in how it deals with these issues, it makes it possible for other countries who recognize that there is a problem and who are not happy with the problem to do something, and that includes most of the European countries.

If you look at what they call "social legislation" that exists within the Common Market, it is far more extensive and intrusive in the employment relationship than anything the United States will ever get to. The same thing with the labor government in Australia. Their attitude is, "We would love to do something about this problem. We recognize it is a problem. Our own fleets are being decimated. However, we cannot do anything."

To the extent that all of a sudden the largest trading nation in the world, with over 50 percent of the maritime trade in the world, says, "We are going to change the rules," what I think is most likely to happen is, you are going to start to see a lot of other of the developed nations in the world follow the lead. I think it is a fairly high probability that Australia would, which is one of our major grain producers.

Mr. FAWELL. May I interrupt you? That is one of the fears that I hear being expressed. Indeed, every country will, insofar as the U.S. is concerned anyway, slap their labor laws on a ship as it comes into their waters. I guess we could say the same thing might be done insofar as international air flights are concerned. We might say that they are not treating their personnel as we, in America, would like to have them treated. Therefore, we will apply our labor laws to British Airways and all the other international airways. I do not think anyone would contemplate doing that.

These ships, when they come into the New York harbor, will spend most of their time on the high seas or in other ports. Yet, our labor law is going to be applicable to them? Or do we take the labor law off as they get out into international waters?

Mr. SCHNEIDER. If they choose never to come back to the United States, then our labor laws are irrelevant.

Mr. FAWELL. Supposing they resort to their deprived mode of handling their people once they are out in international waters? If I understand our labor law here, we would expect them to hire their crews out of New York, the union hiring halls. I do not see how one could contemplate that would happen.

Mr. SCHNEIDER. It is interesting because the 3rd Circuit Court said about 2 years ago, relating to certain Kuwaiti vessels that were reflagged under the American flag, and those vessels never did business in the United States. They basically sail between the Middle East and Europe. They were oil tankers. This was when we were having problems over there. What the 3rd Circuit Court said was: because they never did business in the United States, despite the fact that they were American flag vessels, U.S. labor laws did not apply.

What that would argue is, to the extent that you choose not to do business here, you are going to be exempt from the laws, to the extent that you only subject yourself to our jurisdiction, to the extent that you voluntarily come here and do business, regardless of the flag.

I think that what you are going to run into, in terms of the Australians saying it is their labor laws, the British saying it is their labor laws, all of these countries can do that today. If you start to do a country-by-country analysis, you see that they are applying things. If you look at international flights—it is not in the labor area—if an airline flies into the United States, it is subject to the full FAA safety regulation system.

Mr. FAWELL. I am not talking about FAA. I am talking about the Fair Labor Standards Act and the National Labor Relations Act. I do not think anybody would suggest, and there certainly would be howls of protest, if we said to these people, you are subject to our labor laws. I see nothing in this bill that would say that you are not required to hire out of the union halls then.

Maybe I am taking too much time.

Mr. ANDREWS. Take a little more.

Mr. FAWELL. Just one other question. You had mentioned that there is the destruction of the American fleet. The other story which I have heard is that the destruction of the American flag fleet is because they priced themselves out of the market. Indeed, they are highly subsidized. There is no question about this.

If I have a ship and I want to have it registered in the U.S. registry, but it was not made in this country, I cannot register it. Is that right?

Mr. SCHNEIDER. I am unclear on your question.

Mr. FAWELL. Let me put it this way. A U.S. flag ship must be constructed in this country; is that right?

Mr. SCHNEIDER. No.

Mr. FAWELL. Is there roughly a $3 million subsidy from the United States government per U.S. flag ship?

Mr. SCHNEIDER. To the extent that you are getting a subsidy, then the rules change, depending on the vessel, but you are not required to be built in the United States in order to carry an American flag. If you would like a subsidy, then you are subject to some different rules and conditions than if you just want to operate under the American flag.

Mr. FAWELL. I suppose most would opt for the subsidy. Is there this subsidy of roughly $3 million per vessel?

Mr. SCHNEIDER. I think that is what it averages. I do not know.

Mr. BALDERAS. Not all get them.

Mr. SCHNEIDER. Not all of them get them. It really depends on the particular vessel: its age, where it was built, and things of that sort.

Mr. FAWELL. If you accept the subsidy, must you then have your ship built in the U.S. ports?

Mr. SCHNEIDER. There is a time period——

Mr. BALDERAS. If I may say, not all of the American steamship lines are getting an operating differential subsidy. Some of them are. I believe Sea Land, for example, does not. It never has received an ODS, whereas Lykes Brothers and others do. When you receive the subsidy, you must abide by the rules and regulations that go along with being subsidized, which has to do with the age of the ship and I do not know what else.

Mr. SCHNEIDER. The point in terms of the competitiveness of American industry, I think there are arguments to be made that the wages here are too high. I am not precisely certain what cities are covered within your district.

Suppose you were to take Karimatsu, the major producer of heavy equipment, and allow them to build a plant in Peoria, near Caterpillar, and say to them, "You are not subject to American labor laws. You do not have to pay American minimum wage. You can bring in workers from any place in the world. You can export your goods. Your employees are not covered by the right to organize, the right to protection of any sort."

If the Caterpillar were paying minimum wage, they could not compete. What we have in the maritime industry is, because of the whole nature of the maritime industry, we are saying, "We are exempting you from the laws." It is one thing to say that American maritime workers are getting paid $12 or $15 an hour, but it would not matter if they were getting paid minimum wage. They could not compete.

Mr. FAWELL. My time has more than passed. We could go on for quite some time. U.S. flag ships are basically not able to operate internationally. In the global economy, they do not have the ability to compete. So I am concerned about having their rates, which are

highly subsidized and controlled, put producers in America out of business.

I am way over my time limit, and I appreciate, Mr. Chairman, your patience.

Mr. ANDREWS. You are very welcome.

Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. There are just a couple of questions I want to ask our friends here on the panel.

I am not an expert on maritime law, but I wanted to ask how do foreign countries at the present time treat this problem?

Mr. SCHNEIDER. There is a tremendous variety.

Mr. FALEOMAVAEGA. Who has the best demonstration of their laws that have treated this problem?

Mr. SCHNEIDER. It is interesting because we did a survey in Europe of how the various European nations treated them. What you found was, for example in Germany, that German labor laws clearly extend to these vessels. The fact that the laws extend is different from whether or not the laws are actually actively applied. What you have is, the German unions, which are very strong, basically take a hands-off policy toward these vessels.

Clearly, there is jurisdiction. Clearly, the law can apply to these vessels. Practically speaking, it is not applied. The law exists, but it is not really enforced. I think that generally tends to be the pattern. The Spanish have just revised their laws. In the past, they did not extend; they clearly do. The Common Market has stated very clearly that they would like to extend it. The EEC has said they are going to; it is not there today.

Mr. FALEOMAVAEGA. It is your feeling that if we take the lead on this issue, really put teeth in it, and make it really applicable, do you think that the other countries will also follow our lead?

Mr. SCHNEIDER. The person who is responsible for it in the Australian government said to me in unqualified terms that they would follow if the U.S. did it. If you look at the whole trend of the EEC, they would probably do the same thing. The reason that countries have complained is, they are in the very interesting situation that they are benefiting. They have citizens who are benefiting from the American loophole. Of course, they are going to complain.

Mr. FALEOMAVAEGA. I will make a small observation here, in terms of a multiple standard, in terms of what has happened to the maritime industry here in our own country. It is very unfortunate, because it seems that we are at the point now where we are not at all competitive. I wonder if you could share with the panel, or this member at least, three of the strongest reasons why our maritime industry is in the worst situation ever?

Someone said we need another world war to get us back on to the same footing with the other countries. I wonder if you could share with us at least three basic reasons why we are in such dire straits, as far as the maritime industry in this country is concerned?

Mr. SCHNEIDER. A starting point is, you have to look at it in an historical context. We have, for a long time, subjected our American flag vessels to a system of legal regulation that many of our competitors overseas were not subject to. Because it is a mobile in-

dustry, that gives you a tremendous competitive advantage. It is not just in the labor area. It is in the whole ship safety area and things of that sort. There are a lot of regulations that have put them at a competitive disadvantage.

As not a member of the industry, I will say this, and my neighbor on the right may kill me. You also see some of the things that you, Congressman Fawell, were referring to. I do not think that people in American industry responded the way a lot of people in the American steel industry and automobile industry did. They did not recognize the competitive problems they were facing, they were receiving governmental support, and as a consequence, they really did not clean up their own house.

If you look at American companies today and if you look at American willingness, there is a much greater willingness to do that. Historically, what happens is, you find yourself behind the eight ball. If you look at the American steel industry, it is about one-third the size it was, in terms of the number of employees, and about one-half the size it was in terms of revenues 15 years ago.

Mr. FALEOMAVAEGA. I suppose one of the problems here, and I am sure our friends across the aisle will express that concern, is in terms of our corporate enterprises: they cannot deal with our own maritime industry, so they will have to hire and employ foreign flag carriers to carry the products or commodities that we have in order to be competitive.

I guess the question comes down to the point of, where can we get our friends in management to be able to work together with the maritime industry so that we can be competitive on both sides. It is the same issue evolving out of NAFTA. American companies are leaving this country at the expense of American workers.

How do we improve so that we expect the highest standards of working conditions, equipment, and all of this, but always for the profit motive? I am not against the profit motive, but where can we find a mutual line of agreement, where both management and maritime labor unions do not have this adversarial role? Can we try to work out some way so that both industries can be competitive?

Am I correct in saying that this is what most of corporate America has done? It has simply hired foreign vessels because it is cheaper, at the expense of American workers?

Mr. SCHNEIDER. I think that, in real terms, is how a market economy works. It is. You are going to the one that gives you the best quality and the best cost and the overall best deal, however you evaluate it.

My proposition is, if you are an American company, and I am an American investor, I start by looking at where I am going to put my money. There are American companies that are actually succeeding in the business, but it is very difficult to put together a business plan that makes sense from an economic system, when you start off with one arm tied behind your back and one leg tied behind your back because of the whole system. That is saying, we are going to allow Karimatsu to set up shop right next to us, and they are not subject to our system.

At that point of time, we have a strategic decision, which is that we are either going to totally eliminate our minimum wage laws,

we are going to eliminate our labor laws—and we, as a society, are not going to do that—or what we are going to say is, "If you want to do business in the United States, then you are going to have to play by the same rules." That is exactly what we are trying to negotiate with Mexico right now on NAFTA.

Mr. FALEOMAVAEGA. If we make this applicable, what will this mean in losses to our corporate friends, as far as more stringent requirements for them to have to apply? They are the ones who are getting these foreign carriers because it is cheaper and lot easier to obtain.

And why Liberia and Panama, of all countries? Is it because they have the best laws for the registry of vessels?

Mr. SCHNEIDER. Yes. They have no laws. They have some, but in real terms, it is a totally laissez faire system.

I think what you really get down to is, by passing this law, we are saying to American investors and American owners, "You now have a fair chance." You are saying to the American workers and workers of the world, "If you are going to come to the United States, we are going to treat you with a basic level of decency."

We are not saying $12 an hour; we are saying minimum wage. We are not saying that you are going to be organized. Exxon has a fleet now and some American flags that are non-union vessels. There is no guarantee that there is going to be a union on board these vessels.

What it does mean is that if I complain because I have an unsafe condition, I have legal protection against discharge because I complained.

Mr. FALEOMAVAEGA. We are concerned with the 50 percent of their crew as the standard. What happens to the 49 percent? Should we be just as concerned if there were 49 percent of Americans on that vessel and their rights as decent human beings, entitled to benefits and not being treated unfairly?

Mr. SCHNEIDER. The way the language in H.R. 1517 has said is that to the extent the flag, the ownership, and the majority of the crew is from one country, then that country is going to take a very active interest in the treatment of what happens on board that vessel. To the extent that the flag is all there is, the country really does not have a very strong vested interest. They do not want to disgrace themselves, but in real terms, they are not going to really work very hard to try to maintain conditions.

Mr. FALEOMAVAEGA. I was under the impression that the rights of every American as a member of that crew should be protected. I was wondering if there was a magic number to the 50 percent requirement as stated in the bill?

Mr. SCHNEIDER. There are some legal traditions that basically say when you hit the 50 percent threshold, at that point of time there is going to be a greater interest.

Mr. FALEOMAVAEGA. We did that years ago. Fifty percent to be American Indian and 50 percent to be a native Hawaiian. What is a 50 percent native Hawaiian and native American. That boggles my mind when you put percentages of that sort. I raise the same issue with whether or not the rights of any American on those vessels ought to be protected, rather than putting on a 50 percent data requirement.

Thank you, Mr. Chairman.

Mr. ANDREWS. Thank you very much.

Mr. Ballenger?

Mr. BALLENGER. Thank you, Mr. Chairman.

I have what I think is a simple question. Do American ships at present operate under the Fair Labor Standards Act? Is there time-and-a-half for overtime over 40 hours and all that other stuff that us business people have to go through?

Mr. SCHNEIDER. There are maritime exceptions, so you do not get time-and-a-half for over 40 hours. If you happen to be on a passenger vessel, then you are in a tip category, so it is half the minimum wage. There are actually some exceptions in the early 1960s, when it was applied to the maritime industry, that carved out exceptions.

Mr. BALLENGER. Basically, it would not be the same Fair Labor Standards Act that everybody else in this country manufactures under?

Mr. SCHNEIDER. That is exactly right. It would be the same Fair Labor Standards Act that currently applies to an American flag vessel.

Mr. BALLENGER. In other words, the exceptions would disappear, that you just mentioned?

Mr. SCHNEIDER. No.

Mr. BALLENGER. They would still be there?

Mr. SCHNEIDER. Yes.

Mr. BALLENGER. One thing more. Obviously, to get the wages up and to build the fleet back is a good purpose, and I recognize that.

As a person who sometimes uses cruise lines, being a very practical cruise user, I go to the travel agent and say, "Give me a stack of cruises." So they hand out these things to me, and you leaf through them, and they are $10,000 or $15,000, but here is one for $2,300. You think that $2,300 is worth looking at. You wonder why, and it turns out it sails out of Belize and back to Belize. But it was still cheap, so I took it. It was excellently done and so forth. It really had an American crew, but I could not figure out why in the world it was so cheap, until I recognized the restrictions.

This boat never went out into the ocean. There are, evidently, a bunch of restrictions, such as staying within coastal waters. I was asking this captain to explain to me how he could make any money hauling us around as cheaply as he did. He said there were all kinds of oceangoing restrictions. The law changes and the wages change, even though his crew is all American. Is there such a variation? In other words, if you stay in coastal waters, is there a different law or are there different regulations that you have to work under?

Mr. TURNER. Sir, I would suggest that comes under the laws of Belize and not U.S. law. That was a foreign flag.

Mr. BALLENGER. No, it was an American flag. I do not know what it was, to be frank. I never looked at the flag.

Mr. TURNER. I am sure it was not an American flag. It may have had American-born American citizens working, but it would come under their own national laws.

Mr. SCHNEIDER. One of the last points on economics is the underlying question: Can Americans compete? It is interesting because what you are seeing now is Motorola. The electronics industry is

extraordinarily competitive. There is this whole flow of companies that were going into Southeast Asia, where you could get cheap labor, and there was very little regulation. Now what they found is that for all sorts of reasons, Motorola is moving production back to the United States.

Mr. BALLENGER. They were willing to invest in substantially labor-saving devices in Motorola's operation in this country. I am a manufacturer myself. If you do not spend money to upgrade your equipment and to cut your labor costs in operation, you go out of business. Motorola, in investing in its own equipment, upgraded it. I do not know if you do that on a ship.

Mr. SCHNEIDER. They did a lot on the labor front to increase quality, to increase their service, reliability, and things of that sort. What they found is that the caliber of the American worker, being closer to the marketplace to cut delivery time, and things of that sort made a difference.

I think that if this law were passed, the American cruise industry is not going to disappear because people like yourself are still going to take cruises. You are going to look at a whole complex of decisions as to why you are making this decision to take a cruise. There are going to be people who will say, "I am going to take the lowest priced cruise, and I am going to fly to Antarctica in order to pick up that cruise."

Where there is the mainstream of the market, what they are going to do is look at quality and the delivery of service. To the extent that you get an enormous growth business, it is not going to disappear. It is not going to be severely impacted by this law.

Mr. BALLENGER. The one thing we both will admit, though, is that the cost of that cruise is going to be substantially greater once this law is passed. In other words, there is that thing we watch on TV all the time—$279 for 3 days in Bermuda—could now be raised to $879.

Mr. SCHNEIDER. I think that is interesting because if you get into the economics, the one that is very easy to get into is Carnival Cruise Lines, because they are a publicly traded company. If you look at their profit margins, they are way above average for American industry.

If you look at the labor component of these vessels, what you start to see when you put it together is, they could cut their prices, or their costs could go up and they could keep their prices constant, and still be very competitive and still get higher return than the average company.

I do not know how price-elastic the cruise business is. I do not think anybody really knows. But the one thing that is fairly clear is, if you start to look at their own financial reports, to the extent that they were to double their wages, their return might drop from 22 percent to 18 percent, but I will tell you, there are a lot of investors in this country who would happily invest in something for an 18 percent return. So at that point, it is not automatically clear.

Mr. BALLENGER. I understand what you are saying. I think we both got our point across.

Thank you, Mr. Chairman.

Mr. ANDREWS. Mr. Schneider, in your testimony, you make reference to some of the arguments against the bill. You make reference

to ILO Convention 147. We have heard from the Deacon, Mr. Sansone, and Mr. Turner some compelling stories about victims of present practices. Was ILO 147 of any aid or comfort to any of the victims that you have encountered? Did it do any good?

Mr. BALDERAS. On occasion, it is. It depends upon the port. It depends upon the powers that be and their familiarity with ILO 147 and, of course, their response to it. Yes and no, depending upon those particular ports.

Mr. ANDREWS. Would you characterize it, Deacon, as a sufficient protection for these individuals?

Mr. BALDERAS. When it comes down to deficiencies with the ship, the Coast Guard has the power to look into it and do something about it. When it comes down to rights and abuses of seafarers, then they really do not. There is not that much that they can do.

If the crew says, "This ship is unseaworthy because it has a hole in its side," the Coast Guard can go down and readily take action, to the extent that they are capable of doing it. But if the crew says, "We are being cheated out of our wages, and we are being deposited, little by little, in foreign ports," that is a horse of a different color and something they cannot do anything about, regardless of the ILO enforcement.

Mr. ANDREWS. Mr. Sansone, what do you think?

Mr. SANSONE. ILO 147 is at least a step in the right direction. I think ILO 147 or something similar to it should have a little bit more teeth to it. On occasion, ILO 147 has been an advantage to seafarers.

Unfortunately, ILO 147 is not uniformly enforced from port to port. In one port, where you might have a deficiency on a ship, it might be severe to one Coast Guard inspector, where in another port, it might just be a ho-hum situation. I do not know what the answer is, as far as equal enforcement across the board in what the Coast Guard can do.

What I am saying, as I try to be a champion for the seafarer, is that slavery is going on within the United States on board these vessels. Something has to be done to protect these poor guys, because they are so fearful and they are always being destroyed by being blacklisted, where they cannot find gainful employment even in their own country.

There are some countries that even make people sign clauses within their contracts that tells them that they cannot get involved with any kind of labor organization and get any more money to their wages; if they do, they will be incarcerated, the money will be taken away, and given back to the shipowner. This takes place in the United States.

Mr. ANDREWS. Mr. Turner, we are going to ask if you would give us an answer to the same question, and then the committee will adjourn for about 15 minutes so we can go cast our votes and return. At that time, I think we will be ready to proceed with the second panel. Terry, if you would, give me your opinion of the utility of ILO 147.

Mr. TURNER. I concur with the previous testimony of Mr. Sansone and the Deacon. However, I would like to put on the record the subject that we visited earlier and I did not get a chance to comment about. I do not want to beat a dead horse, but it is the

competitive idea, of whether or not the U.S. flag is competitive in the world economy.

I submit that it is. We represent Sea Land, which is the largest liner carrier in the world. Sea Land takes not one penny of subsidy and competes very well with First World nations, nations that pay their seafarers a living wage. There is a major difference between those countries, like Japan, Germany, and Australia, and companies who fly the runaway flags. We cannot compete with that, but we can compete on an equal footing with some of these other countries, despite the fact that this country's policies has tied our hands behind our backs. We cannot build a ship in this country because we do not subsidize our shipyards.

Mr. ANDREWS. So if I can paraphrase, you think our greatest competitive disadvantage is not our economic disadvantaged versus other regulated countries, it is our disadvantage against unregulated countries or flags that can operate in a vacuum, without the regulatory environment. Is that a fair statement?

Mr. TURNER. Absolutely.

Mr. ANDREWS. We are going to adjourn for about 15 minutes, and we will resume with the second panel. We thank very much the members of the first panel. I can run faster than those two Republicans; that is why I stayed.

[A brief recess was taken.]

Mr. ANDREWS. Ladies and gentlemen, we are going to resume the hearing. Thank you for your patience.

I would like to tell you that I was tardy because I was involved in a serious and urgent consultation on the floor. The truth is that I forgot the hearing was on the second floor and was wandering around the first floor looking for it.

With that, we have with us Mr. John T. Estes, President, International Council of Cruise Lines, and Ms. Jean Godwin, Vice President, American Association of Port Authorities. Mr. Estes?

STATEMENTS OF JOHN T. ESTES, PRESIDENT, INTERNATIONAL COUNCIL OF CRUISE LINES, ACCOMPANIED BY DUNCAN HOOPES, PRICE WATERHOUSE, WASHINGTON, DC; AND JEAN C. GODWIN, VICE PRESIDENT, GOVERNMENT RELATIONS, AMERICAN ASSOCIATION OF PORT AUTHORITIES

Mr. ESTES. Thank you, Mr. Chairman. I have with me from Price Waterhouse Mr. Duncan Hoopes, who I would like to introduce to the committee, if you should have any questions on my testimony later.

What I would like to do, with your permission, sir, is to submit my written testimony for the record and just summarize and amplify some of the points that are made in the testimony.

Mr. ANDREWS. Without objection, it is so ordered.

Mr. ESTES. Mr. Chairman, I think it is important that we try and get back to basics here a little bit and talk about this bill, what this bill would do, and why this bill is so very important to us.

We have heard a lot of information this morning. I must confess that some of it is correct and some of it is incorrect. Perhaps we can sort that out in the next few minutes.

Mr. Chairman, this bill will injure American workers, it will injure American families, and it will injure American foreign trade. I think we should state that right up front. There is no equivocation. There are no ifs and buts about it. This will happen. I do hope that when my testimony is finished, you will see why I say that.

It is a bad bill, Mr. Chairman. I struggled with the word "bad" because to some extent, it conveys what I am trying to say and to some extent it does not. It is not an evil bill. It is not a malicious bill. It is not an immoral or a naughty bill. What it is, Mr. Chairman, is a flawed bill. It is a defective bill. It is a bill that is injurious to many elements of our country, and it is a bill that is terribly unjust. I hope, once again, you will agree with me when I have finished my testimony.

The bill, Mr. Chairman, is based on emotion. It is based, to some extent, on misrepresentation. It is based, as you must have heard from the first panel this morning, on unsubstantiated evidence. With that as an introduction, Mr. Chairman, let me just go briefly over why it is a bad bill: because of the bad law that it would create, the bad foreign relations that it would foster, and the bad economics that would result.

With respect to the bad law that it would create, it is bad law because, as you have heard, we have on the books ILO 147. There was a lot of talk this morning about ILO 147 and whether it is working properly or improperly. I would urge this committee to look at that. That is where the direction ought to be. Examine ILO 147. If the Coast Guard is not doing its job, let us make sure it does its job. If ILO 147 needs some shoring up here and there, let us do that.

That is an international treaty that is on the books, that will work, that can work, and we should make it work. We do not have to go through all of this. We do not have to put a watershed of new extraterritorial laws onto the international maritime industry when we have on the books a piece of law that will work, a statute that will work, and a treaty that will work.

We have other treaties, Mr. Chairman, that are also on the books. Some of these are mentioned in written statements that the committee has received, both from myself and from other interested organizations.

The 1958 Geneva Convention is rooted in the concept that the seas are open to all nations. That means that the extraterritorial application by any port state flies in the face of that convention. That is an obligation of the United States, it is an obligation that went into force here in 1962.

We also have the 1963 Vienna Convention. That is similar to the ILO Convention, in the sense that the consulates around the world—not only in this country but in other countries—are charged with the responsibility for investigating any alleged abuses that may have happened to seamen.

Mr. Chairman, what this bill sets up is a totally false jurisdictional test, based on regularity of contact. Yet, amazingly, it exempts from the bill liners. As you may know, a liner is, in a sense, a common carrier. A liner goes from port to port, from place to place, on a regular, routine basis. Of all types of shipping, they per-

haps have the most regular contact of any, and yet the bill exempts them. One has to wonder why. Why exempt liners, when they do have the most contact?

The other thing with respect to regularity of contact is the comment that was made earlier today about airlines. Clearly, airlines have regular contact with this country. People will say, "Well, we have bilateral treaties with other countries, so we could not have the unilateral application of labor laws to foreign airlines." We do not seem to be bothered about treaty violations with respect to seagoing vessels, so I am sure that the precedent is present here in this case, it would be present there.

Mr. Chairman, I would also urge you to look very briefly, in your deliberations on this bill, at the FACS testimony about national security. The Congress has much greater opportunity than we do to talk to the Pentagon, both on the record and off the record, about the significant contribution that foreign flag vessels do play with respect to our national security.

It is a bad bill, Mr. Chairman, because it is bad foreign relations. Some would say, "Who cares about foreign relations? We are sick and tired of foreign countries coming in here and setting up steel plants and automobile plants and taking away our jobs."

Mr. Chairman, it is bad because in today's world, as you know, foreign relations means foreign trade. Foreign trade means jobs. No foreign trade, no jobs. It is that simple. This bill is very bad for foreign relations. You have received, from a number of Western European countries, a formal protest. It has been filed before on similar legislation. They are not fooling. They believe this bill is serious. They do not want this bill passed. And I can assure you, it will hurt our foreign trade. If you do not believe me, please talk to them. It is a serious matter.

It is a bad bill from a foreign relations standpoint, Mr. Chairman, because it flies in the face of literally centuries of maritime custom and practice. We have, in the maritime industry, the supremacy of the flag. That is not just a phrase; that is a concept that has been applied for centuries with respect to how a ship is managed, how a ship is run. The captain of the ship, Mr. Chairman, is the law of that ship. The captain is responsible to the flag.

We are not talking about a factory. We are not talking about a hotel or a shopping center. We are not talking about the parallels that were expressed to you this morning. We are talking about a ship. We are talking about international maritime commerce. We have to get ourselves oriented into that context and then look at the effect of this bill. I do not think we have done that yet. I think we are still thinking in terms of a shopping center or a hotel or a factory.

It is a bad bill, Mr. Chairman, because it is bad economics. It is bad economics because, let me talk just very briefly about the cruise line industry. We have completed, with the help of Price Waterhouse, a major study which indicates what our industry provides to the United States.

In 1992, the foreign flag cruise line industry created 450,000 full-time-equivalent jobs in the United States. In the next 4 years, we will add another 135,000 jobs. That is a 4-year figure. Those, incidentally, are jobs that will be created by our industry without one

cent of public money involved. These are taxpaying jobs. They will benefit the treasury, and they do not cost the Federal treasury anything to create.

We paid, in 1992, $14.6 billion in wages to United States citizens in the United States, which were recycled in the United States economy. In the next 4 years, that will go up by $4.3 billion. In 1992, we paid in taxes $6.3 billion, and in the next 4 years, we will pay an additional $2 billion.

Why do I stress that? Because it is important to understand, and I cannot overstress this point. This industry will relocate if this bill is passed. It is not going to happen overnight. You have heard other witnesses this morning tell you that is not the case. I am here to tell you that it is the case. I will make available to you any CEO that you desire to come and talk to you personally and let you know personally what they are planning to do if this bill is passed.

If this bill is passed, this country is going to lose tens of thousands of jobs in this industry alone. Is it worth it? Do you think it is worth it? Is this the policy that we should have for the United States? We do not think it is.

People are going to say, "You cannot relocate because you do not have the infrastructure." It does not take much to build an airline terminal. It does not take much to build a ship terminal. And it does not take much to extend airline runways. The home porting of an international cruise ship business, for example, is not important. The port can be anywhere.

We are already taking 300,000 people annually out of Vancouver. Those people ought to be cruising out of Seattle, but we have moved to Vancouver because of unfortunate United States laws. That is a fact. We are taking tens of thousands of people out of Puerto Rico. That is part of the United States, admittedly, but the point is that we can move the port, and we will move the port. It is very easy to move over to the Bahamas; Nassau is not far. All we are talking about is just another 20 or 25 minutes, if that, on an airplane.

Please do not underestimate the effect of adverse legislation with respect to an international business and the hostility that would create with respect to a favorable climate. We will seek out a favorable economic and political climate in which to operate. This bill would not create that climate. It would not foster the type of climate that we need.

Mr. Chairman, what I would like to do for my good friends from the clergy who do a good job, I have offered them my card before, and I offer my card again. In previous testimony, I have told them, "If you have a problem, please call me." If it is a problem with one of our members, I will make sure that it gets to their attention. If it is a problem with someone else in the maritime industry, I will work with them. I have not received one call. I repeat that offer again.

I tell my good friends from the unions, Mr. Chairman, "Talk to the people on the docks. Talk to the men and women who load the ships in Miami and Fort Lauderdale and San Diego and New York. Ask them what they feel if this industry relocates. Talk to the people in the hotels. Talk to the people in the airlines. Talk to the taxi drivers. Talk to the 25,000 travel agents throughout the

United States if this industry relocates and the impact it will have on their livelihoods and the livelihoods of their families." That is what I urge my good friends from the unions to do.

With respect to my good friend from the bar, a fellow lawyer like I am, he knows and I know that the American laws do not apply and could not apply prospectively in the foreign shipping area. It does not because it is prospective application.

With respect to the Seaman's Wage Act that was stressed in some of the testimony that was presented, both in writing and verbally, those are instances of arbitrating a dispute that has occurred in the past. It is one thing for this country to hold open its courts as a fair arbitrator; it is another thing to put on the entire international maritime industry the whole panoply of American labor laws. Those are two entirely different things.

Finally, Mr. Chairman, I would urge that the members of this committee, you and your colleagues, talk to the people down the street in the embassies of major foreign countries that are right here. They will come and see you if you call them. They are very concerned, and they will come.

Mr. Chairman, the overwhelming evidence against this bill is there. It must be stopped. It should be stopped here. It has been around much too long. Thank you, sir.

[The prepared statement of John T. Estes follows:]

Mr. John T. Estes

Mr. Chairman, members of the subcommittee, my name is John T. Estes. I am President of the International Council of Cruise Lines (ICCL), a non-profit industry association comprised of American- and foreign-owned companies engaged in the overnight passenger cruise line business. On behalf of our 20 member lines, I express strong and unanimous opposition to H.R. 1517, legislation to extend coverage of certain United States labor laws to foreign-flag vessels.

The ICCL membership consists of foreign-flag passenger cruise vessels, all of which call either frequently and routinely or, for some only occasionally, at United States ports. We are an international organization and, as such, are concerned with the activities of our members not only in the United States, but worldwide. Our ships cruise nearly everywhere. We represent about 90% of the worldwide, deep-sea, lower berth cruise capacity which consists of over 75,000 berths and more than 27,000,000 cruise days on a full year basis. Many of our passengers are Americans who board our ships in foreign ports as well as United States ports.

The ICCL has testified before this subcommittee in previous Congresses in opposition to similar legislation. We wish to emphasize that our opposition is not directed at the domestic policy set forth in the National Labor Relations Act (NLRA) or the Fair Labor Standards Act (FLSA). Domestic United States labor relations policy is a matter which we have not addressed. Our objections are based on the adverse economic consequences that would result to the United States if this bill is enacted. Our concerns are also rooted in international law and maritime practice, long-established principles of understanding and comity between sovereign countries, and the necessity of preserving those time-tested principles. In summary, unilateral extraterritorial

extension of domestic United States labor laws under H.R. 1517 invites foreign government retaliation, creates uncertainty, will lead to chaos in the international maritime community, and will damage the domestic economy by reducing jobs for United States workers. A protest to the passage of this bill has been lodged with the State Department by the following countries: Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, and The United Kingdom (see Appendix A).

I

THE FOREIGN-FLAG CRUISE INDUSTRY IS A MAJOR CONTRIBUTOR TO THE UNITED STATES ECONOMY

What we want to stress at the outset, Mr. Chairman, are reasons in addition to international considerations for urging rejection of this legislation. H.R. 1517 poses a threat to the United States' economy -- particularly the loss of United States jobs. When we were before this subcommittee in September, 1992, we referred to a dynamic economic network that has developed and grown over the past ten years in the United States around a vigorous and healthy foreign-flag passenger cruise market. Since that hearing, a major research study to define the cruise industry's economic contribution to the United States -- information frequently sought by Congress and government agencies -- has been completed by the national accounting firm of Price Waterhouse. The study confirms what we surmised. Based on a factual analysis of cruise line employment records, surveys of passengers and employees, interviews with industry executives, plus federal data from the Commerce and Labor Departments, Price Waterhouse,

relying on established methodology, determined the existing, as well as projected economic impact of the cruise industry on this country. Among the study's findings for the year of 1992:

* **The cruise industry created 450,166 jobs.** This includes 63,168 core sector jobs and 71,612 supplier sector jobs, for a total direct impact of 134,780 jobs. Expenditure-induced (ripple effect) jobs numbered 315,386 for a total economic impact of 450,166 jobs. These are full-time equivalent jobs, not part-time jobs, in many areas of the economy including ports, travel agencies, airlines, agricultural, and hotels.

* **The industry paid more than $14.5 billion in wages to United States employees.** The breakout is $2.2 billion in core sector wages and $2.3 billion in supplier sector wages, for a total direct impact of $4.6 billion in wages. Expenditure-induced wages were an additional $9.9 billion, for a total impact of more than $14.5 billion.

* **The total tax impact of the cruise industry is $6.3 billion in federal, state, and local taxes.** Cruising generated $519.6 million in state and local taxes and $1.6 billion in federal taxes, for a direct impact of $2.1 billion in taxes. Expenditure-induced taxes were $944.6 million for state and local governments, $3.3 billion in federal taxes.

Price Waterhouse reported that of the $20.8 billion economic impact in the United States, seven continental United States port cities -- Miami, Los Angeles, New York, Port Canaveral, Fort

Lauderdale, Seattle, and Tampa -- shared $2.7 billion. The other $18.1 billion economic impact is spread throughout the economy but targeted to a broad cross section of industries and businesses. For example, in 1992 some of the payments made directly to principal suppliers to the cruise lines in the United States were:

* Airlines - $653.5 million
* Travel Agents - $584.3 million
* Marketing/Advertisers - $340.9 million
* Food and Beverage - $315.7 million
* Vessel Repair - $208.4 million
* Vessel Fuel Suppliers - $131.9 million

Although these findings are truly impressive, perhaps more impressive and to the point are projections of growth potential this industry has in the United States over the next four years. Price Waterhouse concluded, based on a conservative estimated growth of 6.8% annually, by 1996 the cruise industry will create an additional 134,712 full-time United States jobs, pay $4.3 billion more in United States employee compensation, and pay $1.9 billion more in United States taxes.

Conclusion: *The foreign-flag cruise industry makes a significant contribution to the United States economy and is poised to contribute even more in jobs, wages, and taxes in the next four years.*

II

H.R. 1517 WILL RESULT IN A LOSS OF UNITED STATES JOBS

Mr. Chairman, the findings of the Price Waterhouse study emphasize the extreme consequences that would result from enacting this legislation. H.R. 1517 will threaten the domestic contributions -- jobs, wages, taxes -- provided by the foreign-flag passenger cruise industry to the United States. **H.R. 1517 will cause the cruise industry to rapidly shrink and eventually move operations out of the United States and away from United States ports.**

Will H.R. 1517 really create more United States jobs? The answer is no! It will reduce the number of United States jobs.

With all of this at risk to American wage earners and their families, one must ask why would this proposal be seriously considered? Based on ICCL data, there are currently approximately 36,000 jobs worldwide aboard ICCL vessels which are held by many (though not exclusively) non-American workers. Some of these vessels never, or seldom, call at United States ports, and a number of those workers onboard are represented by foreign unions. As noted, the Price Waterhouse study documents 450,000 full-time equivalent United States jobs today. Is it good policy to sacrifice those 450,000 existing United States jobs in the hope of gaining something less (probably much less) than the 36,000 maritime jobs? If this legislation passes, not only will the existing 450,000 United States jobs be jeopardized, but there will be little, if any gain in maritime jobs because the cruise industry will relocate substantial operations from the United States.

If it is not jobs, is the motivation for this legislation to improve working conditions for seamen on cruise ships? In the cruise line industry, we take a great deal of pride in working conditions provided onboard personnel. But don't just listen to us, and certainly don't listen to third parties speculating on the treatment of cruise ship workers. Come see for yourself. Come take a tour of our ships when they are in port. Talk to our employees. Make up your own minds based on firsthand evidence.

Congress probably frequently hears threats of relocation in response to economically hostile legislation. We are also familiar, as is this committee, with stories of runaway plants and runaway factories to avoid unionization. You have heard all that before. But we urge each member of this committee to ask: if you had invested hundreds of millions of dollars in assets that were mobile (a cruise ship), and you were confronted with a choice of either becoming non-competitive on a worldwide basis or relocating your operations . . . what would you do?

The "runaway shop" argument (often advanced by labor organizations as an indictment of relocated operations) is not relevant to this industry because not only are we an international industry free to move from country-to-country and port-to-port, but in order to keep international costs competitive we do in fact on occasion move from country-to-country. International shipping will always seek a hospitable economic and political climate from which to operate. Indeed, it must because that is what its competition does. It would be an unfortunate failure of United States policy not to recognize that home ports are unimportant to passengers. For example, New York is no longer a port for the Caribbean nor Seattle for Alaska. The home port can, in today's world, go anywhere . . . and does.

Conclusion: The legislation would not create jobs, would not significantly improve working conditions of employees, and clearly would sour diplomatic relations with our trading partners who have repeatedly registered strong opposition to this legislation because it flies in the face of customary international law, practice, and custom.

III

H.R. 1517 WOULD CREATE A HIGHLY DISRUPTIVE NATIONAL LABOR POLICY

H.R. 1517 would not represent sound national labor law policy. It is not our intention to examine here the authority or the sovereign right of the Congress to pass laws unilaterally extending jurisdiction of the United States to international activities. We question the wisdom of taking unilateral action. For example, if it is desirable to extend national labor policy to the international maritime industry simply because vessels "regularly engage in transporting passengers [and cargo in the foreign trade] to and from the United States," why not extend the same coverage to international airline carriers? International airlines make hundreds of landings daily at United States airports "regularly engaging in the transport of passengers to and from the United States". Their employees, many from third world countries, are not covered by United States wage and union organizing requirements. If it is good maritime labor policy to extend domestic labor requirements to foreign-flag ships, is it not also good policy to extend such a policy to the international airline industry? The consequences, of course, are obvious. Major disruptions would occur in bilateral and multilateral aviation relations. Schedules would be severely affected. Worldwide air travel would be placed in a state of total chaos and turmoil.

Foreign government retaliation against the United States passenger aircraft would be swift and our international trading partners could be expected to retaliate in any number of ways. It is reasonable to suggest a parallel analogy with at least equally negative consequences with respect to the maritime industry.

Conclusion: H.R. 1517 does not create jobs, does not improve working conditions for employees, does not improve trade and transportation relations, does not represent responsible foreign policy, and is not sound national policy.

IV

H.R. 1517 IS UNNECESSARY BECAUSE THE UNITED STATES IS A SIGNATORY TO INTERNATIONAL AGREEMENTS COVERING VESSEL SAFETY AND WORKING CONDITIONS ON ALL SHIPS CALLING AT UNITED STATES PORTS

In this Committee's Report on a substantially similar bill (H.R. 1126) introduced in the 102nd Congress it was stated:

> The purpose of H.R. 1126 is to give foreign seamen an apparatus of (sic.) the redress of exploitive and unsafe working conditions when working on foreign-flag ships engaged in U.S. commerce. (See page 8, Report 102-984, Committee on Education and Labor.)

As a leading member of the International Maritime Organization (IMO) the United States has authority to inspect and, if necessary, prevent the sailing of any foreign-flag vessel calling at United States ports. This authority is exercised repeatedly by the Coast Guard. Every

foreign-flag vessel calling at any United States port is rigorously inspected. All of these vessels, including those flying flags of convenience, must comply with IMO standards which are often more stringent than United States safety standards. Any allegations of "unsanitary", "unsafe", "inadequate" crew facilities or working conditions, or of "mistreated" or "exploited" seafarers on repeatedly inspected foreign-flag vessels need only be brought to the attention of the Coast Guard. As a signatory to both IMO regulations and International Labor Organization 147 (ILO 147), which covers labor standards on all merchant ships and is also enforced by the Coast Guard, procedures are in place to address these allegations.

Finally, it should be noted that foreign-flag cruise ships, in addition to the Coast Guard inspections, are routinely inspected by the Centers for Disease Control (CDC) to determine sanitary conditions onboard the vessels. These are technical and thorough inspections covering the many health related functions carried out on a modern cruise ship. There is absolutely no credible evidence to support allegations that passenger cruise ships calling at United States ports are unsanitary.

Conclusion: Responsible, reliable, and professional United States government agencies currently have jurisdiction over foreign-flag vessels in United States ports to compel compliance with international regulations and standards for safety, health, and working conditions. Frequent routine inspections of those matters on such vessels are currently taking place by the Centers for Disease Control, the Department of Agriculture, and, of course, the United States Coast Guard.

V

THE COMPETITIVENESS OF THE UNITED STATES-FLAG SHIPPING INDUSTRY WILL NOT BE IMPROVED BY THIS BILL

The argument is advanced that the demise of the United States merchant marine and the number of vessels flying the United States-flag can be arrested or minimized by the unilateral imposition of the FLSA and NLRA on foreign-flag vessels. In addition to the disruption that would result from rupturing well established international maritime law and custom, the proposed legislation fails to address the basic reason for the non-competitive United States merchant marine . . . namely that United States maritime policy has over the years drifted away from aggressively encouraging the development of a strong United States-flag commercial fleet. That policy question is being addressed by the current administration as well as appropriate Congressional committees and, as you know, reform proposals are being developed. The extension of United States domestic labor laws to international shipping would not alter the unfortunate non-competitive status of the United States-flag. One need only examine the competitive strength of other maritime nations such as, for example, Great Britain, the Netherlands, and Norway. None of these countries extraterritorially extend their domestic labor laws in the manner contemplated by this bill. Those countries are, however, highly competitive in the international shipping industry including competition with such open registry countries as Liberia and Panama.

Conclusion: H.R. 1517 will not improve the competitive standing of United States-flag carriers.

VI

H.R. 1517 IS AN UNWARRANTED ATTACK ON OPEN REGISTRIES

ICCL ship owners, as all ship owners, have a variety of legitimate economic reasons for selecting a flag. There is, however, one important operating consideration that does not enter into flag selection -- passenger and crew safety. The ICCL has previously testified to the unfortunate misconception that foreign-flags are being utilized in our industry to evade stronger and more severe United States safety requirements. That misconception had the effect of painting our industry as more concerned about profit than about safe operations when just the opposite is true. We know that without safe operations, we would be out of business. In order to put that misconception to rest, in 1991 we requested the American Bureau of Shipping (ABS), an organization that inspects ships for the United States Coast Guard, to conduct a comparative analysis. The ABS, in a well-documented conclusion, found that the IMO safety regulations which govern our ships and are enforced by the Coast Guard for ships calling at American ports, are more advanced than United States regulations and more often than not exceed the safety standards of the United States. The ultimate responsibility for safety, of course, rests with the owner who must provide a competitive service that yields a profit by:

A. Ensuring that all vessels and onboard equipment comply with all safety rules and regulations, whether issued by the flag state, the port state, class societies, or others;

B. Operate with trained and competent personnel onboard and on shore; and

C. Have in place operational and contingency plans for safe operations.

Many items which influence utilizing an open registry relate to commercial considerations such as the ability to have ships repaired anywhere in the world without a flag state penalty, freedom to have a ship built to international standards without protectionist restrictions, and, of course, political considerations.

There are undoubtedly other considerations, but to suggest that utilization of an open registry or "flag of convenience" is made for the sole purpose of avoiding the necessity of dealing with a labor organization is incorrect and misleading. It is not misleading, however, to note that some traditional maritime nations may have priced themselves out of the market with respect to labor costs. Owners will naturally look for trained and competent personnel from other sources and an open registry may and probably would permit that option -- one of many options to be considered in selecting a flag. Equally as significant is the unique labor requirement of the modern day cruise vessel. Large numbers of non-deck and non-engine personnel under a necessary policy of recruitment flexibility are needed for the hotel staff, bartenders, entertainers, laundry, kitchens, and other disciplines such as medical, recreation, and hairdressers . . . many of whom must be multilingual. None of these are from employment categories traditionally and historically represented by United States maritime unions.

Conclusion: Flag selection is based on a large variety of legitimate business considerations and not directed at preventing employee representation.

VII

H.R. 1517 IS INCONSISTENT WITH INTERNATIONAL ACCEPTANCE OF ESTABLISHED MARITIME LAW AND PRACTICE

International law limits the authority of nations to assert jurisdiction over matters affecting the interests of other nations. It is accepted doctrine that rules of international law are part of the law of the United States, and that United States courts are bound to give effect to international law. The Paquete Habana, 175 U.S. 677, 700 (1900); Restatement (Third) of the Foreign Relations Law of the U.S. (Sec 111) (1987). In "International Law as Law in the United States", 82 Mich. L. Rev. 1555, 1561-67 (1984), Professor Henkin comments:

> It is instructive to compare the history of admiralty and maritime law in the law of the United States. Maritime law came to the U.S. from England either by inheritance together with the common law, or by incorporation as part of the law of nations... The maritime law applied by United States courts in the early years was clearly international in origin, part of the law of nations; the courts looked to a "general maritime law" applied not only in England but in other countries. In the nineteenth century, however, maritime law in the United States was domesticated... A reasonably clear line developed between national maritime law, which is "private" law addressing private interests and not governed by binding principles of international law, and the international law of the sea governing relations between States. When Congress legislated to modify admiralty law it was not violating any law of international character or an international obligation... Today maritime law applied by the courts is U.S. law and only U.S. law; Public international law remains international law, determined by international criteria, even when the courts incorporate and apply it. Congress cannot amend it; it can only supersede it for domestic purposes. (Emphasis added.)

With that background, it is not surprising that the United States and other Member States of the Organization for Economic Cooperation and Development (OECD) have agreed to avoid or minimize conflicts with foreign laws, policies, or interests by following an approach of

". . . moderation and restraint, respecting and accommodating the interests of other Member Countries." OECD, MINIMIZING CONFLICTING REQUIREMENTS: APPROACHES OF MODERATION AND RESTRAINTS" 7 (1987).

We mention this because these long established international principles stretching back literally hundreds of years form the basis for the Geneva Convention on the High Seas, to which the United States is a Party, and which entered into force on September 30, 1962, provides in Article 2: "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty". This in turn is rooted in the concept that freedom of the seas means freedom of the vessel to fly any flag belonging to the community of nations and that jurisdiction over the vessel rests with the country of the flag which the vessel flies. The vessel enjoys the nationality of that state and under international law, is blessed with the rights and privileges of that state. A vessel flying the flag of the United States must be accorded under these principles the same comity when it calls at the ports of other countries or when it is on the high seas just as foreign-flag vessels are entitled to be received in United States ports or on the high seas. This system works well. H.R. 1517 would absolutely upset that balance. One must inquire why such an extreme alteration in these time-tested and carefully evolved principles would be suggested. Why would the Congress be encouraged to place restrictions on foreign vessels operating under the regulatory and legal regime of their flag states, and subject owners of those vessels to significant legal liability for conduct which is in conformity if not required by their flag state? We submit that from an international maritime policy standpoint there is no defensible answer to those questions.

Conclusion: H.R. 1517 would upset a long-standing principle of reciprocity in international maritime affairs.

VIII

H.R. 1517 IGNORES ESSENTIAL OBLIGATIONS OF FLAG STATE SUPREMACY

Under the law of the sea each vessel has a "nationality" which is evidenced by certain "documentation" permitting, among other things, the use of the nations "flag", all of which is accomplished through a process known as "registration". These terms -- nationality, documentation, flag, and registration -- are terms of art and significant in evaluating the concept of "flagging out", which is also known as using "flags of convenience" or "open registries". Some maritime labor organizations view the application of this process and the meaning of these terms to amount to little more than loopholes to avoid compliance with more rigorous rules and regulations. Not surprisingly, many of those complaints originate from jurisdictions where labor organizations have their most aggressive recruiting campaigns and are confronted with dwindling membership ranks.

Every ship has a nationality. Every vessel has documentation which is the evidence of that vessel flying the flag of the country. The term "flag" is used to signify that the country of that flag has exclusive jurisdiction over the vessel flying that flag. Finally, registration is essentially the legal process of recording title. It establishes the priority of competing liens and mortgages, details regarding the ships origin, a surveyors certificate, and the names of the owners. The

details of registration will vary from country to country. But one aspect of registration that does not vary is the function under international law of registration of a ship with a nation State. The Geneva Convention on the High Seas at Article 5 states that function is ". . . the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."

It is important to appreciate and understand even superficially that bundle of rights and obligations that flow from the concept of ship registration and the sovereign right of each country in fixing the conditions of registration. The effect of H.R. 1517 is to recklessly trample on those rights and disregard those obligations. As further stated in the aforementioned Article 5 of the Geneva Convention: ". . . Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly." In the face of that treaty commitment, H.R. 1517 in an apparent effort to appease objections by foreign governments, establishes criteria for foreign ownership and crew nationality requirements which, if met, would exempt such a foreign documented vessel from the application of United States labor laws. This approach succeeds only in further trampling on the supremacy of the flag and the sovereignty of the country whose flag the vessel flies. Most nations, including the United States, would agree that their sovereignty cannot be compromised. In H.R. 1517, the United States is, in effect, challenging the sovereignty of the foreign government and placing restrictions on that government's sovereignty in return for exemption from United States domestic laws. It must be kept in mind that the area in which we are involved is international maritime commerce and not tax law, criminal law, nor securities transactions where isolated extension of

domestic laws (even though frequently accompanied by bilateral treaties) are often deemed a legitimate extension of domestic jurisdiction.

Occasionally a specious argument is advanced that because seafarers from foreign documented vessels in United States territories may seek to collect claims to wages earned, under certain circumstances, in the courts of the United States, there is ample precedent for the wholesale extension of United States labor laws to such vessels. It is one thing for the United States to offer its good offices and open its borders to, in effect, arbitrate a limited dispute over the entitlement of a seaman to wages. It is quite another to impose upon foreign-flag vessels, in a unilateral manner, United States labor laws governing collective bargaining, unfair labor practices, and the level of wages and hours, which were crafted and enacted for application to domestic employer and employee labor relations.

Conclusion: H.R. 1517 tramples on obligations of other countries for accountability of activities onboard vessels flying their flags.

IX

THE JURISDICTIONAL TEST IN H.R. 1517 OF REGULAR PORT CALLS IS MEANINGLESS IN INTERNATIONAL MARITIME COMMERCE

The fact that many ICCL foreign-flag vessels regularly call at American ports, board American passengers, and return to United States ports does not justify the extension of United States

domestic legislation to these international operations. These same vessels regularly call at foreign ports (on the same voyage), board foreign passengers (on the same voyage), and return to foreign ports (on the same voyage). This committee would be justifiably incensed if ships flying the United States flag were forced to comply with domestic labor laws and regulations of another country because that ship regularly calls at a port of that country.

Although some ICCL members utilize an open registry or "flag of convenience", others fly the flags of traditional maritime nations such as the United Kingdom, Norway, Italy, Holland, and Greece. Most often our vessels are in a United States port for about eight-to-ten hours before returning to sea for a period of anywhere from four-to-fourteen days, sometimes longer. Under these conditions, which port state should have a controlling interest? Regularity of contact should not be the test because many ports have "regular contact". The number of passengers of a particular country should not seem to be the test because that can change from voyage to voyage. The nationality of a majority of the crew would not seem appropriate as that too changes from time to time. It is precisely this type of inquiry which has resulted over the years in development of and adherence to the concept that the law of the flag state shall govern the "internal order" of a ship. It may not be a perfect solution in the eyes of some, but we have learned that it prevents the potential for jurisdictional anarchy on the sea which should be expected from enactment of H.R. 1517.

Conclusion: Regularity of port calls is no basis for asserting jurisdiction over foreign-flag vessels.

X

CONCLUSION

H.R. 1517, as introduced, should be rejected in its entirety. From a domestic policy standpoint, this legislation must not be allowed to become law. The cruise industry is a major contributor to, and participant in the United States' economy. The literal effect of this legislation will be to end these advantages through a slow, but sustained exodus of the cruise industry to offshore foreign ports.

Those who have taken a cruise are well aware of the personal benefits the industry provides -- a relaxing, entertaining leisure travel experience with a high value return on their vacation dollar. Those whose businesses are associated with the cruise industry, either directly or indirectly, -- travel agents, airlines, hotels, restaurants, shipyards, advertisers, uniform makers, longshoremen -- have come to rely on dependable cruise line accounts. Many businesses depend exclusively on the cruise industry for their very livelihoods.

Can the foreign-flag cruise industry make an even larger contribution to the United States economy? Of course it can. That is unless narrow legislative proposals are allowed to become law and create a hostile operating environment. These are the ramifications which this subcommittee should carefully weigh.

We have testified before you today that there are 450,000 full-time equivalent jobs in the United States created by the foreign-flag passenger cruise industry. Over the next four years, the

industry plans to add another 134,000 jobs assuming several factors -- including a receptive operating environment -- remain constant. The $20 billion-plus impact of wages and taxes on the United States economy is a conservative estimate, because it only counts the "value added" component and none of the raw materials, such as fuel and agricultural products that the industry uses. The cruise industry is a partner in America's economic growth, and has been for more than a decade. Our expansion will result in the creation of more jobs, more wages, and more tax revenues in the years to come. The projected growth estimate of 6.8 percent compounded annually is conservative because it does not include the impact of several expansion projects. From 1980 through 1991, the industry has grown 9.8 percent annually, and there is no reason to expect a slowdown now.

We want to work hand-in-hand with Congress to assure that this economic impact continues to benefit the United States. However, H.R. 1517 is neither receptive nor friendly to the passenger cruise industry. Application of the bill's provisions will stymie plans for market expansion and immediately begin a reversal of the growth curve that the Price Waterhouse study projects for the United States. In effect, all that this country has gained through the existence of a foreign-flag passenger cruise industry will first, be placed in jeopardy, and then eventually lost. The enactment of H.R. 1517 will not mean the end of the foreign-flag cruise industry. It does mean, however, that the industry will relocate its ships away from United States ports. The job growth and economic benefits the industry has brought to the United States for more than a decade will be decimated and any chance for continued growth in the future will be lost.

Mr. ANDREWS. Thank you, Mr. Estes.

Ms. Godwin?

Ms. GODWIN. Thank you, Mr. Chairman. I appreciate the opportunity to be here. I do have a statement that I would like to have submitted in the record. The advantage of being last, though, is that I would prefer just to have a chance to talk, not so much from my statement but to respond to some of the issues that have already been raised.

Mr. ANDREWS. Without objection, your statement will be entered into the record. Please feel free to summarize.

Ms. GODWIN. Thank you.

We are the American Association of Port Authorities, which is a trade association for the public port agencies throughout the United States. We are government agencies, typically at the State or local level. Our job is to create jobs at the local level and economic development at the local level. I do have some statistics in my testimony about the economic impact of ports in the United States, including 1.5 million jobs, $52 billion in personal income, and so on.

We are also responsible for investing public moneys, and those public moneys, more than $11 billion since 1946, have been invested in facilities at the port, including cruise facilities that would lay empty if the cruise lines leave us, including cargo facilities that may be subject to diversion as well. According to the Maritime Administration, the ports will be spending more than another $5 billion over the next 5 years. This is all public money.

I am not going to defend the conditions that were discussed by the previous panel. It is deplorable. Something needs to be done about it. The question is, what approach should be taken. The approach we have before us now is the suggested extension of U.S. laws to foreign flag vessels.

The answer is certainly not to turn international law on its head, the international law which now says that flag countries have jurisdiction over their own vessels. This is not a loophole in U.S. laws. These are not our vessels, and these are not our citizens. This is not comparable to putting a factory next to Caterpillar and saying, "You don't have to comply with any of our laws."

This is an international market. These vessels go from U.S. ports to many other ports and spend a lot of time in the water. They are not our vessels. Extending our laws to those vessels makes absolutely no sense. If we have a minimum wage rate in this country that is contrary to the minimum wage rate in Germany, and they decide to enforce their minimum wage laws against the same vessel because it calls German ports, whose law dictates?

There was a mention that we should not retain the current system just because it is the status quo. If you dig into why the status quo exists a little bit, I would specifically refer you to the Supreme Court opinion, the excepts that were attached to fill the restatement for the record from the Federation of American Controlled Shipping. The reason why the system exists the way it does is, that is the only way it can work.

There was a lot of mention of the ILO Convention 147. Those are international standards that a number of countries have agreed to, including the U.S. That would not be an effort for us to extend our

own laws to foreign flag vessels. We would simply be asking others to agree to standards which we have all agreed to and to enforce those standards.

Certainly, there is a risk of retaliation and other countries trying to do the same thing and perhaps taking action against U.S. flag carriers as well.

What I would like to do is try to expand a little bit on the concern about the diversion of cargo to other ports and lost export sales, how it might affect us in the international market.

There has been a lot of discussion of increased costs and how much more. No one has actually come out with figures, in terms of this hearing, as to how much more it might cost a particular vessel to operate. I think there is a clear consensus, even among all the witnesses, that it would increase the costs of these foreign flag vessels.

Mr. Fawell mentioned the fact that there is a world market. That is what we need to consider. We are not just looking at these foreign flag vessels and the time they are in U.S. ports. These vessels do not have to come here. The products have to get into the United States. The products can come in through a Canadian or Mexican port. The cruise lines do not have to operate here; they can operate out of other ports.

The U.S. products, the grain and coal and bulk type commodities that are going to be affected by the application of our laws to nonliner vessels, are very competitive in the world market. They are competing with Argentina or Australia. Those producers are going to be using the same foreign flag vessels, with the same wage rates and international standards. We cannot handicap our own producers and say that they have to pay higher transportation costs so that the vessels can come into the U.S.

I would like to give you a few examples, if I can. We export $3.8 billion in grain, or at least we did in 1991. Most of that was through Pacific Northwest and Great Lakes ports, both of which are close to Canada, or Gulf Ports, which are close to Mexico.

Just to give you one example, export wheat or corn shipped by rail from the Dakotas or Montana, which now goes to U.S. Pacific Northwest ports, could just as easily go by rail to Canadian ports and be shipped out on a foreign flag vessel from a Canadian port. If that were to happen, the foreign flag vessel would not be subject to this law. The same thing with grain that is barged to New Orleans or Houston could be sent by rail to a Mexican port or even to a Canadian port.

The situation is particularly difficult for the Great Lakes. Our Great Lakes ports do not have any U.S. flag carriers that operate in international commerce. Most of what goes out of the Great Lakes into international commerce goes on foreign flag ships, for example, Canadian ships.

Diversion is one problem. Lost sales is another problem. Again, talking about grain, pennies per bushel can make U.S. grain too expensive. It can price them out of the market. If you are exporting to Japan or China, those markets could just as easily be served by Argentina, Brazil, or Thailand. We are just going to lose the sales.

To turn to coal for a minute, 102 million short tons of coal that we export, worth $4.2 billion, a lot of that goes to Europe. The diversion situation may not be a problem with coal.

The southwest Virginia coal, they are not going to be able to afford to ship that by rail to Canada. It is going to be expensive. They are simply going to lose the sale. It is going to be too expensive to transport it on a foreign flag vessel, with increased costs out of a U.S. port. They will not be able to send it to a Canadian port, because it will be too expensive to ship it by rail. They will simply lose the sale.

Other suppliers of coal, like South Africa, Columbia, Venezuela, and Australia, which was mentioned here, will benefit. They will be able to use the foreign flag carriers. They will not face those increased costs. Pennies per ton will make the difference, and we will lose the sale.

The coal folks are also concerned about retaliation. For example, if they are using a German flag vessel to ship their coal to Germany, or a Japanese flag vessel to ship their coal to Japan, and those countries are upset that we are trying to extend our labor laws to their vessels, they will simply not buy the U.S. coal. They will use one of those other markets.

It is an uphill struggle now to get those countries to buy our products. Giving them another excuse to avoid buying U.S. does not make any sense for this country at all.

If we really are the 800-pound gorilla—and I like that analogy because I think I can use it and maybe use it better—we should not be using our power to tell other countries, "You have to do it the way we do. You have to apply our laws."

What we ought to be doing is taking the lead and enforcing international provisions like ILO 147 and not pushing people to do what we do and dictate. We should take the lead and enforce that law, enforce its international standards, and hope that will guide others to do the same thing.

That concludes my prepared remarks. I would like to answer any questions, if there are any.

[The prepared statement of Jean C. Godwin follows:]

STATEMENT OF JEAN C. GODWIN, VICE PRESIDENT, GOVERNMENT RELATIONS, AMERICAN ASSOCIATION OF PORT AUTHORITIES

Good morning. My name is Jean C. Godwin. I am the Vice President of Government Relations of the American Association of Port Authorities [APPA]. Founded in 1912, AAPA represents virtually every U.S. public port agency, as well as the major port agencies in Canada, Central and South America and the Caribbean. My testimony today reflects only the views of the United States delegation of AAPA.

Our Association members are public entities mandated by law to serve public purposes—primarily the facilitation of waterborne commerce and the consequent generation of local and regional economic growth. As public agencies, AAPA members share the public's interest in serving our country's economic, international trade, and national security objectives.

AAPA opposes H.R. 1517, which would extend certain U.S. labor laws to foreign-flag vessels. U.S. ports, particularly those with cruise operations and those that handle bulk and breakbulk commodities are gravely concerned that this legislation would increase the cost of trade; hurt the export position of certain U.S. products such as grain, coal, steel and cars; and result in the diversion of cruise operations and bulk and breakbulk commodity shipments to non-U.S. ports.

Public ports serve as a vital conduit linking the United States to the world marketplace, a critical intersection in the intermodal chain. Ports serve broad hinter-

lands, connecting farmers, manufacturers and suppliers often thousands of miles inland to international markets sometimes tens of thousands of miles from our shores.

International trade creates tremendous positive economic impacts at the local, regional and national level. According to recent figures from the Maritime Administration, in 1991, commercial port activities resulting from cargo operations created 1.5 million jobs, contributed $70 billion to the gross national product, provided personal income of $52 billion, and generated Federal taxes of $14 billion, State and local taxes of $5.3 billion. The deep draft commercial ports of our country handle over 95 percent of the Nation's international trade—nearly one billion tons of cargo a year worth nearly $500 billion.

The importance of ports to local, State and regional economies cannot be overstated. Exports today are increasingly necessary to the health of America's economy, representing one out of six new U.S. manufacturing jobs. Exports accounted for 90 percent of U.S. GNP growth last year. According to the U.S. Department of Transportation, U.S. ports spent more than $11.8 billion from 1946–1991 on port and related shoreside infrastructure and are expected to spend more than $5.5 billion over the next 5 years.

All U.S. coastal ranges could be adversely affected by efforts to extend U.S. labor laws to foreign-flag vessels, particularly U.S. seaports bordering Canada or Mexico. U.S. ports compete fiercely with Canadian and Mexican ports, particularly for midwest cargo. H.R. 1517 would create a strong disincentive for foreign-flag carriers to call at U.S. ports. To give you an idea of the magnitude of the potential impact, the U.S. Coast Guard estimates that 95 percent of the passenger cruise trade, 95 percent of our dry cargo imports and 75 percent of the crude oil pumped ashore involve foreign flag vessels.

H.R. 1517 could substantially increase the costs associated with handling and transporting bulk and breakbulk commodities. For ports dependent on bulk commodities in close-margin international markets, such as grain and coal, just a few cents a ton can determine the commodity's competitive position in the marketplace. Quite simply, U.S. exporters of those commodities would be priced out of international markets under the proposal.

With regard to cruise operations, many cruise ports are situated close to foreign ports which also offer cruise passenger services. In order to avoid the application of H.R. 1517, a vessel owner could easily drop the U.S. port of call and embark passengers at the nearby foreign port. For example, cruise passengers that might otherwise use a Florida or West Coast port could fly to a Caribbean or Canadian port for embarkation. Cruise ports have made significant investments of public funds in the physical landside facilities which support cruise calls. Those public funds would be wasted and significant economic benefits to the local and regional economies would be lost if we drive the passenger cruise business offshore.

Together, these effects mean a decline in U.S. competitiveness, income, and jobs. The intent of H.R. 1517, to protect seamen on foreign-flag vessels, is admirable. However, unilateral action by the United States to force foreign-flag vessels to comply with our labor laws is highly inappropriate under international law, which gives the country of flag jurisdiction over the vessel. It could also open up the possibility of retaliation by other countries against U.S. flag carriers calling at their ports. In addition, as previously discussed, it would make it increasingly difficult for U.S. ports to compete for bulk, breakbulk, and cruise operations which create jobs and other positive local and regional economic impacts.

I urge the subcommittee to consider the adverse impact of H.R. 1517 on U.S. ports and U.S. jobs.

Mr. ANDREWS. As you may have heard, there is another vote on. I will ask my colleague, Mr. Fawell, whether he would like to ask his questions now, or whether he would prefer to vote first and come back. I am going to take a little more time and personally would like to vote and come back, but I yield to you.

Mr. FAWELL. I think that would be better.

Mr. ANDREWS. We will be back momentarily.

[A brief recess was taken.]

Mr. ANDREWS. That was the last vote of the week. We ordered it that way so that we could continue in an orderly fashion. Let us resume.

Mr. Estes, there are issues of both safety and economics raised by this bill. I want to come to the economics in just a moment. One of the things that occurs to me is that not only the safety of the seamen on the ship implicated by some of the issues we talked about this morning but everyone is.

If my sister were going to take a cruise on a cruise ship that is a member of your association, and she were worried about her safety on that trip—she had heard rumors that the ships were unsafe—and asked you to reassure her that they were safe, on what basis would you reassure her?

Mr. ESTES. First, because she is your sister, I would be sure that I was being very cautious and correct in what I said.

Mr. ANDREWS. I should hope so. With any passenger you would do that, I am sure.

Mr. ESTES. Safety is a comparative concept. It is not an absolute concept. We have had, in our industry, in the last 20 years a total of two passenger fatalities. We have carried tens of millions of people. Now, two is too many; one is too many. From a comparative concept of transportation, that is pretty good.

We were accused for the longest time, because we fly foreign flags, of running from tough U.S. Coast Guard safety requirements, instead of opting for U.S. Coast Guard requirements. We knew that was wrong, because our ships all comply with the International Maritime Organization rules. We know that those rules are stronger than the Coast Guard rules.

For me to say that is subjecting myself to, "Well, you are paid to say that. You would say that anyway." I realize the credibility problem.

So we retained the American Bureau of Shipping in New Jersey to do an arm's length study for us and come out with whatever safety principles they wanted and compare the IMO standards, which our foreign flag members have to comply with, with the Coast Guard's. We knew how it was going to come out. The IMO standards are stronger. Amazingly, the Coast Guard enforces the IMO standards.

Not too long ago, we had a report that we worked with the General Accounting Office with, because they wanted to look at various cruise ship safety factors. So we worked with them. We made our ships available, many of our captains, many of our companies.

The result of that report was really amazingly good. The recommendations in that report were fine. I think one has to have uniformity with respect to signage among the various ships, and I think that is an excellent idea. There were some things with respect to where lifejackets should be stowed and that sort of thing. By and large, our record is superb, and your sister really, from the standpoint of a safe, happy cruise, should be well assured.

Mr. ANDREWS. You have just described the standards to which the ships are held. Who is responsible for inspecting and enforcing the standards?

Mr. ESTES. For ships that regularly call—a term of art—at United States ports, the United States Coast Guard is. When a new ship comes in, the ship is actually turned over to the Coast Guard for 3 days. They take it, our people leave, and they sail it and do whatever they like with it.

There has been an interesting change in the law on that last year. Now, if the ship is built in Europe, for example, the Coast Guard can sail across the Atlantic and do some testing.

Then the ships are subjected to four quarterly inspections by the Coast Guard, unannounced, surprise, quarterly inspections. They look for specific things. There are safety drills that they run the crew through. Then on top of that, we have Center for Disease Control inspections, unannounced. These occur twice a year. We have aphids inspections by the agricultural department, with respect to bringing in food from overseas. Some of our people think we are probably the most inspected industry.

Mr. ANDREWS. What about the other end of the voyage? Who is inspecting these ships from their point of origination?

Mr. ESTES. I am sorry. Do you mean, if a ship went on a 7-day cruise from Miami, and it went to St. Thomas, who would inspect it there?

Mr. ANDREWS. Yes.

Mr. ESTES. There would be no inspection. It is inspected just four times a year.

Mr. ANDREWS. Does every——

Mr. ESTES. Excuse me. May I interrupt? If the ship were sailing, for example, out of Great Britain into the Baltic or into the Mediterranean, the British would inspect it. So it varies.

Mr. ANDREWS. What is the relationship between the flag under which the ship flies and the responsibilities of that flag country to inspect the ship?

Mr. ESTES. Those flag countries are members of the International Maritime Organization, and they have responsibilities to the IMO. Let us assume that a ship is flying the Panamanian flag, and it comes to Miami, and it is inspected by the Coast Guard, and the Coast Guard says that the ship does not pass muster. The Coast Guard then, if it does not get the problem corrected to its satisfaction, it can prevent the ship from sailing, and it does. The same thing happens in other countries.

Mr. ANDREWS. Let us take the Panamanian hypothetical a little more specifically. As I am sure you are aware, the General Accounting Office released a report called Additional Actions Needed to Improve Cruise Ship Safety, in March of this year.

Mr. ESTES. That is what I was referring to earlier.

Mr. ANDREWS. If in fact this was a ship flying under the Panamanian flag, according to the GAO's conclusions, it would not have received a quarterly inspection by Panama because only Liberia did that. It would not have received an inspection with two inspectors.

It says, "According to Coast Guard officials and several marine fire safety experts, at least two inspectors are needed to judge the adequacy of a shipboard fire drill on a large, multideck cruise ship. It would not have received an inspection by an exclusive inspector. That is to say, a full-time employee who works only for the flag nation." Is that a sufficient inspection by the Panamanians?

Mr. ESTES. There must be some misunderstanding between my answer and what you are reading. The United States Coast Guard has the responsibility of inspecting ships that call at U.S. ports. That is called their port state authority under the IMO treaties.

Regardless of what flag—whether it is Panama, Liberia, or Great Britain—those ships will be inspected by the United States Coast Guard, if they call at U.S. ports. Now, the flag state—in the case that you are referring to, Panama—also has inspection responsibilities, but the Coast Guard does not have to adopt the flag state's inspection report.

Mr. ANDREWS. How are they doing with those responsibilities, generally?

Mr. ESTES. Normally, it varies. Great Britain, for example, has their own inspectors. Holland has their own inspectors. We fly Dutch flags and we fly British flags.

Mr. ANDREWS. What about Panama? How are they doing?

Mr. ESTES. Panama will contract out their inspectors to a classification society, normally Lloyd's of London or something.

Mr. ANDREWS. This report also found that in October of 1990, the Coast Guard examined the Bahamian flag Vera Cruz I and found fire screen doors that would not close, deteriorated lifeboat equipment, poor engine room maintenance, and a possible leak in the hull.

Six days before, the classification society—is that the one you made reference to a minute ago?

Mr. ESTES. There are classification societies, yes——

Mr. ANDREWS. [continuing] had issued a certificate of compliance. Should we have a lot of confidence in that?

Mr. ESTES. No. That is not one of our members, I might add. I cannot comment on that. I do not mean to be flippant in the answer.

Mr. ANDREWS. What about the Ocean Princess, which is a Bahamian flag vessel? In November 1991, the Coast Guard found problems with fire screen doors, numerous instances of combustibles being stored in stair towers and engine room, galley, and machinery spaces that lacked required fire safety boundaries.

In a December 1991 memo to Coast Guard headquarters, the chief of marine inspection in Miami said that the deficiencies were "of such a fundamental nature that doubts exist as to the adequacy of flag administration/classification society oversight." In August of 1991, 3 months previous to that, the classification society had issued a certificate of compliance. What about that one?

Mr. ESTES. Do you know what this does, Mr. Chairman? This shows the system is working. It shows that the Coast Guard is jumping on these problems, it is reporting them, and it is taking action. That is precisely what port state control is all about. We do not live in a perfect world, but in this case, the Coast Guard——

Mr. ANDREWS. How often does the Coast Guard inspect these ships?

Mr. ESTES. Four times per year.

Mr. ANDREWS. How much time is spent on a frequent or typical inspection?

Mr. ESTES. It will vary. The annual inspection, which is one of the four, will take maybe 2 to 3 days, or it could take a day. It depends on the ship, it depends on the record of the ship.

Do not misunderstand me, please. We are very blessed in this country to have the United States Coast Guard. They are superb, they are tough, they are knowledgeable. We do not agree with

them all the time, but they are professional men and women, and they do a fantastic job.

Mr. ANDREWS. What fire safety standards are they interpolating when they make these inspections?

Mr. ESTES. Fire safety standards?

Mr. ANDREWS. What standards are they applying for fire safety?

Mr. ESTES. IMO standards.

Mr. ANDREWS. Are those standards weaker or stronger than OSHA fire safety standards?

Mr. ESTES. They are probably unrelated. The OSHA standards and the shipboard standards may not be the same because it is a totally different environment.

Mr. ANDREWS. Would they not cover such an issue as whether there was the storage of combustibles being stored in stair towers? Would there not be a relationship there?

Mr. ESTES. Yes.

Mr. ANDREWS. What do the IMO standards say about something like that?

Mr. ESTES. That would be a violation, I am sure. The Coast Guard would pick that up and demand that it be corrected.

Mr. ANDREWS. Who writes the IMO standards?

Mr. ESTES. The IMO is a UN organization, headquartered in London. The United States Coast Guard represents the United States in the IMO.

Mr. ANDREWS. How frequently are they updated?

Mr. ESTES. That is the fire protection subcommittee, and I would guess that there was just a major update now. I would think it would probably occur every 2 to 3 years. There is a lot of new equipment coming out, a lot of new combustibility standards and requirements.

The IMO, once again, largely through the Coast Guard's prodding as well as Great Britain's, on fire safety, which is probably the most critical aspect of shipboard safety——

Mr. ANDREWS. I agree with you that it is reassuring that the Coast Guard has identified these deficiencies, and it shows that they are doing their job as well as they can. I also know that representatives of the Coast Guard regularly come to Congress and say that they are inadequately funded, that they do not have enough resources and people to do the job that we have given them to do.

Could you tell us, are these records typical or atypical of what happens? What is the aggregate safety record of the industry? Let me rephrase it. What kind of documentation exists with respect to these inspections in the aggregate? Is there a record of inspections that have taken place over the last 5 years, what they have shown, and what they have not shown?

Mr. ESTES. That is one of the things I believe the Coast Guard is trying to update, and we are certainly encouraging that. I have talked to Admiral Kime about this myself. It would seem to me that what we ought to do is have a carrot-and-stick approach. Where we have an owner, whether it is a cargo ship or a cruise ship, and that owners has represented in the course of time a high standard of performance, then we can have more of a cursory inspection or spot inspection. Where we, on the other hand, have an

owner who has indicated that he is not able to comply or has not complied, then they ought to come down on him a lot harder.

Mr. ANDREWS. What percentage of the vessels inspected have the kind of serious deficiencies I just read?

Mr. ESTES. I would say very few. Let me give you an example. We——

Mr. ANDREWS. What is your conclusion based on?

Mr. ESTES. We, last year, sailed the equivalent of roughly 28.5 million cruise passenger days worldwide. I am talking just about our group, which is 90 percent of the trade. We have not had any ship stopped. We have had infractions that have been corrected, but we have never had any ship stopped.

Mr. ANDREWS. That is a different question, is it not? What you have just told me is how frequently you have been sanctioned or how infrequently you have been sanctioned for violating the standards. What I am asking is: Given the record of inspections that we have, how frequently or infrequently are violations found?

Mr. ESTES. I would say a violation is probably found, in one form or another, in almost every inspection.

Mr. ANDREWS. I said of a serious nature, like the ones I just read.

Mr. ESTES. I do not know if I can even answer. I can give you some examples.

Mr. ANDREWS. I assume you could not, because the GAO report says the Coast Guard does not maintain summary data on deficiencies found during cruise ship safety inspections.

Mr. ESTES. That is right. That is one of the things they are working on.

Mr. ANDREWS. You do not know, do you?

Mr. ESTES. That is right. I believe they have a program going to update their computer profile to keep that going.

Mr. ANDREWS. But you do not have such a computer profile now?

Mr. ESTES. No. Every company would know, but we do not have it.

Mr. ANDREWS. You do not maintain an aggregate record of that?

Mr. ESTES. No. No.

Mr. ANDREWS. I agree with you, the results are what count. If there have been very few fatalities, too, I think you said that is terrific. If there have been a few accidents——

Mr. ESTES. Passenger fatalities, right.

Mr. ANDREWS. How many employee accidents have there been?

Mr. ESTES. There have been a few more than that. There was a tragic incident about 4 years ago on a lifeboat drill, where the crew had not followed instructions. They were in the boat when it was coming down.

Mr. ANDREWS. Who keeps records of those?

Mr. ESTES. The companies do.

Mr. ANDREWS. Does the UN or one of its entities keep a similar record?

Mr. ESTES. They do, but once again, the international recordkeeping and the domestic recordkeeping function needs improvement. There is no question about it. One of the things we are working on at IMO right now is a better recordkeeping function.

Mr. ANDREWS. I am going to yield to Mr. Fawell. Do you want to take a couple of minutes?

Mr. FAWELL. If I could, yes. I am due over to the Energy subcommittee for another 5 hours of committee meetings coming up, but I did have just a couple of questions.

Ms. Godwin, you gave the example that if this law were to go into effect, a producer of grain or wheat in the Midwest would, first of all, try to determine whether or not there is a port in Canada or another port aside from an American port that would be available. If he could not find one, or if it was too expensive, he would just lose the sale. Is that correct?

Ms. GODWIN. That is correct, sir.

Mr. FAWELL. I think that implicit in what you are saying is that there would be, obviously, increases in regard to the rates being charged by the foreign flag ships that would be serving. The question I have then is, why is it that the U.S. flag ships are not competitive in international trade? That is a rather difficult question, I suppose.

Ms. GODWIN. We could spend the next 5 hours just on that question.

Mr. FAWELL. I hear this so very often.

Ms. GODWIN. I will try to make it a quick answer. There are a number of reasons. There is a debate going on right now over the maritime reform policy and whether we should be subsidizing some of our U.S. flag carriers.

Just in the context of those debates, the liner carriers—they are not covered under this bill, but I will use them as an example—have talked about the different disadvantages they suffer, just in terms of the increased operating costs, and that would include wages and so on.

They are asking for a subsidy of $2.5 million per vessel to cover the difference between operating a foreign flag and a U.S. flag vessel. Obviously, that is not the only disadvantage. They have different tax provisions that apply to them, that they cannot reinvest their foreign earnings without being taxed, which is not true of carriers in other countries. There are a number of different items that they are seeking to have addressed. In terms of the operating costs, it is a lot more.

Again, if you are following the debate on the cargo preference or use of U.S. flag vessels for grain exports to Russia, or aid cargo to Russia I should say, the U.S. flags' bids were significantly higher than the foreign flag carrier bids because their costs are so much higher. I wish I had some concrete numbers for you that would break down where all those cost differences are. Clearly, the concern of the folks who are looking at this bill is that it would further increase the costs of using the foreign flag carriers.

Mr. FAWELL. I heard one comment, or it was in a statement that has been submitted, that of the $700 million which is being guaranteed by the United States government to Russia, possibly up to $200 million of that would represent the added cost of shipping under U.S. flag ships. Therefore, there is a joke going around Europe, by the Russians, that they have their own U.S. aid program, and that is to subsidize the U.S. flag ships. If that is true, it is a rather cruel irony.

Ms. GODWIN. There are very few U.S. flag carriers that are not in the cargo preference trade, that compete in the commercial marketplace. Most of the bulk carriers are foreign flag.

Mr. ESTES. May I add something? One of the interesting factors about the Russian grain arrangement is that, in order to carry Russian grain, the ships have to be repaired in the United States at U.S. yards, even if they could find a cheaper place to have themselves repaired. If they are repaired overseas, they have to pay a 50 percent ad valorem, so that runs the price up quite heavily.

Mr. FAWELL. I am going to find out what all these subsidies are. I have heard so many stories. We will get to that.

My last question is, do you think it is fair when people say that there is a destruction of the American fleet because of the unfair competition we have from foreign flag ships?

Ms. GODWIN. It depends on how you define "unfair competition."

Mr. FAWELL. I suppose by the fact that their prices are lower.

Ms. GODWIN. Their prices are lower, and their wages are lower. If you are talking about a crew that comes from a country where the average wage rate is $3,000 a year, is that unfair? Maybe the horror stories we heard are that they are not getting the average wage rate. But if they are, and the average wage rate here is 10 times higher, what is really unfair about that?

Again, the crewing rates are not the only problem here. We have hamstrung our U.S. flag carriers in other ways. The tax provisions are a great example of that. That has nothing to do with what foreign governments do for their own carriers. Our carriers have their subsidies. They have the cabotage protection here. So they have gotten some benefits from our government as well.

It is not a black-and-white issue at all. It is a very complicated and very difficult issue. That is why I said we could spend 5 hours just on that.

Mr. FAWELL. Is it fair to say that there are owners of U.S. flag ships who also have interests in foreign flag ships in order to be able to compete internationally?

Ms. GODWIN. Definitely, especially the liner carriers have foreign flag ships in their fleets as well. A number of them do.

Mr. FAWELL. Another point that has been alluded to is that for some reason we have the exemption of what are called liner vehicles. When I first saw that in the wording of the bill, I thought the reference was to non-cruise vessels. I was told I had a degree of ignorance that had to be overcome and that we are talking about common carriers.

Ms. GODWIN. Right.

Mr. FAWELL. Why on earth would they be exempt, if this law is all that it is supposed to be? Is there a sound reason why the so-called "common carriers," the liner vessels, would be exempted from the provisions of this bill?

Ms. GODWIN. I think Jack's point is that there is no logic to it.

Mr. FAWELL. There must be a reason. It is a political reason?

Mr. ESTES. I think that in the FACS submission to the committee, if I recall correctly, Mr. Fawell, there was a reference to it. I do not know from my personal knowledge that there was a reference that perhaps because some of the U.S. liner companies have

foreign flag liners, by exempting them from this bill, they would get the support of the bill or at least they would not oppose it.

Mr. FAWELL. That is something I can understand.

Ms. GODWIN. Unfortunately, by addressing only the non-liner carriers, from the cargo side, we are hitting the cargoes that have the least margin of error, in terms of being able to compete in the international market: the bulk commodities that are going to lose the sales.

Mr. FAWELL. They are the ones that are most desperately affected because of the pennies?

Ms. GODWIN. They are the most likely to run into problems because of increased transportation costs.

Mr. FAWELL. Can you envision a situation where all of the international shippers, of all the various nations, could pass laws such as we are asking here to be passed so that apparently every time you go to a different port, you are under a different labor law? Is it even possible? Most of the time you are on the high seas, are you not?

Ms. GODWIN. It is not workable because you would have to determine whose laws apply. If the ship is calling at ports in five different countries, all of their labor laws cannot apply, which is why enforcing the international standards that everyone has agreed to is the only thing that makes any sense. Again, if the United States is going to take the lead, that is the direction that we ought to be going.

Mr. FAWELL. Would it not be relatively difficult, too, to determine at any particular time whether or not there is a controlling interest of citizens of X country, or what the citizenship may be from time to time? It seems to me, to tell the Greeks that you must have at least 50 percent Greeks on your ship, or the English that you must have 50 percent English, it does not sound workable to me as an attorney.

The modes of ownership of ships can be easily disguised. It would be, I think, an administrative nightmare to ever determine whether or not you have 50 percent of the crew actually of one particular nationality, or citizenship I guess would be the designating point, and also of the various owners, who may own in trusts or blind trusts, indirect ownerships, and things of this sort. Administratively, it looks to me like it could be a nightmare, in terms of the enforcement of the law.

Ms. GODWIN. I would have to agree, it would be very difficult to enforce.

Mr. FAWELL. I thank you very much. We will have questions in writing that we will propound to you. I appreciate your enabling me to escape so that I can be with Mrs. Lloyd very shortly over on the Energy subcommittee. Thank you very much.

Mr. ANDREWS. Have a good 5 hours.

I just have a few more questions, Mr. Estes, on the issue of safety. This goes not just for passengers on cruise ships, it goes for employees and passengers on all kinds of ships.

There can be an argument about the percentages or the quantitative distribution of problems, but there are problems. There are people working and sometimes traveling, but probably more often working, in conditions that you or I would not want to work in.

The basic debate that I hear shaping up is whether or not we should attempt to regulate those conditions by U.S. law, or whether we should attempt to regulate them by an international agreement.

If we are going to follow the international agreement path, a critical issue is who is going to be doing the enforcing of the international agreement? Would you agree with that?

Mr. ESTES. Yes. I think that correct.

Mr. ANDREWS. You were making references a few minutes ago to some of the programs followed by certain countries on ships sailing under their flag. I think you made reference to Great Britain and Holland. In the cruise area only, which of the countries do you think, other than the U.S., do the best job of inspection and monitoring?

Mr. ESTES. With respect to those countries that do it, as opposed to those that use a class society, I think that with respect to the countries that we have, the British do an outstanding job. They are very good. I think that the Dutch are extremely good. The Italians are also good. I would think that——

Mr. ANDREWS. In my district, they are very good, the Italians. I hope the record will reflect that.

The British, the Italians, and the Dutch?

Mr. ESTES. Then we have the Greek ships, but the Greek ships do not come here that much. They are primarily in the eastern Mediterranean.

Mr. ANDREWS. What percentage of foreign flag cruise ships operating in U.S. ports fly under the British flag?

Mr. ESTES. What percentage? I do not know.

Mr. ANDREWS. The Italian flag, do you know?

Mr. ESTES. I have them, but I do not recall what they are.

Mr. ANDREWS. The reason I raise the question is, page 15 of the GAO report says, in talking about their data collection, that the four flag nations from which they obtained information—the Bahamas, Liberia, Panama, and Norway—collectively registered about 74 percent of the foreign flag cruise ships operating in U.S. ports as of October 1992.

Correct me if I am wrong, but none of those four countries show up on your list of the best examples, do they?

Mr. ESTES. No. What I was talking about were the countries that do it themselves, as opposed to those countries that use class societies.

Mr. ANDREWS. Do these countries I just listed use classification societies?

Mr. ESTES. Yes. My understanding is that Panama, the Bahamas, and I believe Liberia. Liberia, incidentally, if I might, is a first class operation. They are run primarily by retired Coast Guard people.

Mr. ANDREWS. They are in Virginia, are they not?

Mr. ESTES. Right. They are in Reston. That is right.

Mr. ANDREWS. Why would they do that? Why would they locate in Virginia?

Mr. ESTES. I do not know. The Liberian flag goes back to 1946, when Secretary of State Stetinius started it, right after the War.

Mr. ANDREWS. Are these ships built in Liberia?

Mr. ESTES. No. They have no connection.

Mr. ANDREWS. Do the officers of the corporation live in Liberia?

Mr. ESTES. No.

Mr. ANDREWS. Do any of the employees live in Liberia?

Mr. ESTES. I doubt it.

Mr. ANDREWS. Does the classification society pay revenue to the Liberian government?

Mr. ESTES. The class society? No.

Mr. ANDREWS. Why would the Liberian government want to do that? I realize you are not authorized to speak for them. Speculate for us why they might want to do that.

Mr. ESTES. I would suppose they use it as a means of gaining revenue. That would be one way.

Mr. ANDREWS. Do you know how much?

Mr. ESTES. I do not know what the fees are, no. Liberia is part of the IMO, and they are held accountable for IMO standards. If a ship calling at a United States port, flying the Liberian flag, does not measure up to IMO standards, the Coast Guard will stop it. That is the safety net really.

Mr. ANDREWS. So there is a contract between the Liberian government and the classification society which acts as its agent; is that correct?

Mr. ESTES. Yes.

Mr. ANDREWS. Is that a contract entered into under U.S. law, do you know?

Mr. ESTES. I am sorry to interrupt. Liberia may do some of its own inspecting, too, because of its unique Coast Guard relationship.

Mr. ANDREWS. Do you know if the contract between the Liberian government and the entity which operates out of Virginia is entered into under U.S. law, or is it under Liberian law? Do you know?

Mr. ESTES. I do not know.

Mr. ANDREWS. It calls for compensation to be paid or fees to be paid by the classification society to the Liberian government?

Mr. ESTES. The owner of the ship that flies the Liberian flag, based usually on a tonnage formula, would pay the Liberian government a fee. Then the Liberian government would hire, as an example—I am a little confused about Liberia because they may do some of this themselves. Panama would be a better example, or the Bahamas. They would then hire the class society to conduct an annual inspection.

Mr. ANDREWS. Let us talk about Panama. How does it work there?

Mr. ESTES. I do not know what the class society is, but they would use a class society to do the inspection and report to it whether or not the ship was in compliance.

Mr. ANDREWS. Who selects the classification society that is used?

Mr. ESTES. Very often, it would be the flag state that would select it.

Mr. ANDREWS. So the government of Panama would choose this society?

Mr. ESTES. The class society would be like an agent of the Panamanian government.

Mr. ANDREWS. How does the government of Panama do it? Is this on competitive bidding? Does someone have to be related to General Noriega? How does the decision get made?

Mr. ESTES. I do not know. The United States, for example, uses the American Bureau of Shipping, out of New Jersey, as a class society to do a lot of its inspection.

Mr. ANDREWS. Obviously, it is very good if it is out of New Jersey. How does the Panamanian government choose the classification society?

Mr. ESTES. On merit, I am sure.

Mr. ANDREWS. The fees to the classification society are paid by the Panamanian government; is that right?

Mr. ESTES. The class societies are also, in some respect, governed by a discipline of their own. There is an international organization called IACS, the International Association of Classification Societies. They are, right now, working with the IMO to set international standards. There are also some substandard classification societies, as there are some substandard flag states. Those are the ones that present severe maritime problems.

Mr. ANDREWS. I want to be sure I understand this. The present state of the law is that a ship flying under the Panamanian flag is, in the first instance—as a matter of fact, in the words of the GAO, and tell me if you agree with this or not, they characterize the principal responsibility.

"Inspections by flag nations or surveys by classification societies are the primary check to ensure that international safety standards are met." Do you agree with that?

Mr. ESTES. No.

Mr. ANDREWS. Who do you think is the primary check?

Mr. ESTES. In the United States, I think the Coast Guard is. If I can, for a second, it is port state control. That is why I said earlier, we are blessed to have the Coast Guard.

Mr. ANDREWS. The GAO feels that the classification societies are the primary check. So in the case of Panama, in their opinion at least, it would be the primary check. The classification society is a corporation, a private entity; correct?

Mr. ESTES. Yes.

Mr. ANDREWS. Formed by individuals interested in engaging in this business?

Mr. ESTES. Right.

Mr. ANDREWS. Is it a for-profit entity?

Mr. ESTES. Yes.

Mr. ANDREWS. And it is contracted by the Panamanian government?

Mr. ESTES. Right.

Mr. ANDREWS. I assume there is not, but is there any veto power that the UN or some international organization can exercise over the selection of the classification society?

Mr. ESTES. No. There is, however, as I mentioned earlier, this emerging IACS effort to set standards for classification society performance.

Mr. ANDREWS. Does anyone audit the relationship, financial or otherwise, between the Panamanian government and the classification society?

Mr. ESTES. Outside? I would not think so.

Mr. ANDREWS. So we would not know authoritatively how much was paid to whom and for what between the two parties?

Mr. ESTES. No, but if a ship does not meet the IMO standards, and it is represented to have done that, the port state will not let it sail.

Mr. ANDREWS. Assuming that the port state conducts the inspection, how often are the ships inspected by the port state?

Mr. ESTES. Four times a year.

Mr. ANDREWS. So if a ship were to fly under the Panamanian flag and leave Miami today, May 13, and go on a 10-day cruise and come back on the May 23, and do another one on May 26, and another one every 2 weeks, there could be three or four cruises that would take place between Coast Guard inspections; correct?

Mr. ESTES. There would be many, right.

Mr. ANDREWS. Would there be any involvement that the international standards require for the classification agency to inspect between those Coast Guard inspections?

Mr. ESTES. I would not think so. No, I would not think so. The four times a year is a very adequate port state inspection.

Mr. ANDREWS. Are the classification societies subject to civil liability in the courts of the United States? Let me give you this hypothetical. Let us assume that there is a fatal fire on a ship, there has been an inspection by a classification society that missed the cause of the fire, and a worker or a passenger injured or killed in the fire chooses to sue the classification society in the U.S. District Court for the Southern District of Florida. Is there jurisdiction?

Mr. ESTES. I think there is. I believe there has been some relatively recent litigation involving the American Bureau of Shipping, if I am not mistaken. I do not know what the outcome was.

Mr. ANDREWS. Do the classification societies typically have assets within the reach of the United States courts?

Mr. ESTES. Does the class society?

Mr. ANDREWS. The classification society, would they typically have assets within the reach of U.S. courts?

Mr. ESTES. The American Bureau of Shipping would. I do not know about the others.

Mr. ANDREWS. The American Bureau of Shipping works out of New Jersey for which governments?

Mr. ESTES. The United States. It also does for other countries but primarily the United States.

Mr. ANDREWS. What kind of training requirements are there to be an inspector for a classification society?

Mr. ESTES. They have quite rigid requirements. I do not think there is an international standard, although IACS is looking at setting a standard. There is an emerging problem with respect to whether or not the inspector should actually work for the class society or whether he could be a consultant to the class society. There is a growing body of opinion that they should really be employees of the society.

Mr. ANDREWS. Do the international standards we have been talking about this afternoon reference any training requirements for these inspectors who work for classification societies?

Mr. ESTES. Not to my knowledge.

Mr. ANDREWS. Do they reference or require any ongoing in-service training?

Mr. ESTES. No. I think the marketplace with respect to the major societies is working well.

Mr. ANDREWS. The marketplace does. If I state this correctly, the marketplace is that the owner or operator of the ship flying under the flag of a certain country needs to get the classification approval from the classification society working for that country?

Mr. ESTES. Right. Once a year.

Mr. ANDREWS. And that society is chosen by the government of that country, whether it is Panama or Liberia.

Mr. ESTES. That is right.

Mr. ANDREWS. What is happening with Liberia right now, by the way? Is there a classification society working for them?

Mr. ESTES. I will have to check on that for you. They do a great deal of their own inspecting.

Mr. ANDREWS. There is a civil war in Liberia, is there not?

Mr. ESTES. Reston, Virginia, is the operation that we deal with. Liberia, I do not know——

Mr. ANDREWS. Is their relationship current with the Liberian government, do you know?

Mr. ESTES. I do not know what that is.

Mr. ANDREWS. Just to conclude, Ms. Godwin, I have one very quick question for you. You made reference to my colleague's reference to the U.S. being an 800-pound gorilla, which I thought was a good metaphor also. You said we should use our leverage as an 800-pound gorilla to take the lead in international enforcement.

If you were President of the United States and decided to take the lead in international enforcement, what would you do to address the problems we have heard about today?

Ms. GODWIN. First, I would look at what the Coast Guard is doing now and if we are getting different responses in different ports, as the Deacon was talking about. Is there a uniform regulation or standard set out so that the Coast Guard knows what their authority is and what they should be looking for? Do they have the money, do they have the resources, do they have the personnel to be doing this work? Have they been given any additional resources since we have been part of the ILO 147? I think all those are issues that should be looked at.

Mr. ANDREWS. So you would try to beef up the inspection efforts of the Coast Guard and give them more tools to do their job. I agree, by the way.

Ms. GODWIN. I understand the concern about the seamen being worried about retaliation. If there is some way that there can be intermediaries reporting for them so that the Coast Guard does not have to indicate that a particular crew member has reported something, if there is some way an intermediary can bring it to the Coast Guard's attention and have the Coast Guard——

Mr. ANDREWS. You mean like the Whistleblower Protection Act? But there is no such standard under international standards, is there?

Ms. GODWIN. Not that I know of.

Mr. ANDREWS. There is under United States labor law?

Ms. GODWIN. There is.

Mr. ANDREWS. That is one of the reasons why the bill does talk about it. Is it possible that some of the provisions in the bill are necessary and should be applied, and some are not?

Ms. GODWIN. I think it is a fair statement that we could look at the pieces of what is in the Fair Labor Standards Act or the National Labor Relations Act and see if there are ways that they could be used in this context. I think that just slapping the application of both of those bills, which are very broad-based, on foreign flag ships is not the way to go.

Mr. ANDREWS. Let me ask you this question. Let us assume that the President took that advice and decided to persuade the nations of the world to upgrade the international standards and upgrade international enforcement in the way that you suggested, and I think very wisely suggested. I am certain that the list of countries that Mr. Estes gave us would comply rather readily. Our friends in Great Britain, Holland, and other countries may, in fact, have a better record than we do in many of these areas.

What about the government of Panama? How likely is it do you think that the government of Panama or Liberia is going to be persuaded to join an international agreement? If they do, how likely is it that we are going to be able to have any meaningful enforcement of that agreement by those states?

Ms. GODWIN. That is a difficult question to answer. Obviously, there is a lot of speculation. I think targeting and putting pressure on individual governments is a much more effective method for dealing with this problem, and having the Coast Guard reporting the problems. Obviously, under the ILO 147, they have the authority to fix safety and health problems.

Mr. ANDREWS. Is not the problem, in a case like Panama—I am not at all expert on the condition of the Panamanian government today, but I think it is a fairly safe statement that whether or not there is a functioning civil government in some of these countries is an open question.

Ms. GODWIN. Right.

Mr. ANDREWS. Putting leverage on the government of Great Britain is one thing, or of Canada or Japan, but putting pressure on a government that may not have the normal indicia of existence is quite another.

Ms. GODWIN. The pressure should be applied to the vessel owner, really, more than the government.

Mr. ANDREWS. By whom?

Mr. ESTES. The Coast Guard.

Ms. GODWIN. The same type of situation with the safety standards. If the vessel is not allowed to leave the port, that does not hurt the government of Liberia or Panama. It hurts the vessel owner.

Mr. ANDREWS. The Coast Guard should apply pressure, based on what standard?

Ms. GODWIN. Based on the international standards.

Mr. ANDREWS. But if there is a way that the international standards can be adhered to rhetorically but evaded by flying the flag of a country that is not paying much attention, does not that create a huge loophole to sail through?

Ms. GODWIN. They would have to adhere to it.

Mr. ANDREWS. The inspections are quarterly, are they not?

Ms. GODWIN. The safety inspections are quarterly, but under ILO 147, I think any time a vessel is in port, the Coast Guard would have authority to——

Mr. ANDREWS. But if the Coast Guard is only inspecting ILO 147 four times a year——

Ms. GODWIN. The safety inspections are not the same as the ILO 147 inspections.

Mr. ANDREWS. I understand.

Ms. GODWIN. The safety inspections are on a regular basis. If they have a complaint, if they have information—I am not an expert on ILO 147 and do not want to purport to be—it is my understanding that if they have a complaint, and there is a situation, they could board a vessel and they do not have to wait for a quarterly inspection.

Mr. ANDREWS. I stand corrected. I know that you are right about that.

Ladies and gentlemen, we have had two good panels today. We apologize for the length of the hearing. It is fault of the people on the floor who keep calling for all these votes, not us. It would have been much crisper and shorter had we had the opportunity.

The committee will welcome responses to the questions for which members ask for written responses. The committee thanks the ladies and gentlemen for their participation today. We stand adjourned.

[Whereupon, at 1:45 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows:]

STATEMENT OF HON. WILLIAM L. CLAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

I want to thank Mr. Murphy for scheduling this hearing and express my appreciation for the support and assistance he has provided consistently on this issue.

American flagships, subject to American labor laws, provide fair wages and humane treatment to their employees. Too many of their competitors do not. Though regularly engaged in American commerce and, in many cases, American owned, they escape the requirements of any labor standards legislation by adopting foreign flags of convenience. Too often these vessels fail to provide either a living wage or humane conditions to those who have the misfortune to crew them.

In the two preceding Congresses, this subcommittee, the Subcommittee on Labor-Management Relations, and the Merchant Marine subcommittee have heard testimony of workers being required to work 18 and 20 hours a day for less than a dollar and hour. We have heard of living conditions so unsanitary that they threaten life. We have heard of sailors being forced to provide kickbacks to labor contractors for the privilege of being so abused. We have heard of sailors being abandoned in foreign ports and blackballed for seeking to improve conditions that all would agree are intolerable and inhuman.

When such workers, though engaged in American commerce, are without any practical or meaningful legal recourse, this Nation has the right, and a duty, to eradicate such vestiges of nineteenth century servitude. Such labor practices also undermine the competitive position of American flagships and hasten the destruction of our merchant marine. Both our self-interest and our moral duty require that we take action. H.R. 1517 seeks to correct very real problems.

This bill differs from previous bills I have introduced. For example, while earlier bills only covered American-owned freighters, this bill applies to any freighter regularly engaged in American commerce, regardless of ownership, unless a majority of the ship's owners and crew are citizens of the country of the flag of registry.

Industry witnesses previously contended that limiting the bill to American-owned ships discouraged American investment. I have sought to address that concern. Where it may be reasonably presumed that a ship is protected by the labor laws of another country, ships, including cruise ships, would be outside the purview of H.R. 1517. On the other hand, when a ship is owned by citizens of one country, crewed by citizens of another country, and registered in yet a third country, the ship's crew is unlikely to be meaningfully protected by any country's labor law. That is the void this legislation seeks to fill.

I remain willing to consider any reasonable adjustments that would improve this bill or make it easier to comply with its provisions. Nevertheless, steps must be taken to ensure that the basic rights of sailors are protected, and I intend to work to achieve that end.

Statement of The American Petroleum Institute

The American Petroleum Institute [API] is a nonprofit trade association representing over 300 member companies involved in the exploration, production, refining, marketing, and transportation of petroleum products. API is pleased to provide the following statement on H.R. 1517. API member companies own and operate sizable tanker and tank barge fleets under both U.S. and foreign registry. In addition, API member companies charter a significant percentage of the world's independent tanker and tank barge tonnage. These companies have a large economic stake in owning, operating, managing, chartering, or otherwise utilizing open registry vessels.

H.R. 1517 is one more in a series of efforts spanning 30 years where U.S. maritime union officials have sought to have Federal labor laws applied to foreign vessels based on their involvement in international trade and/or equity ownership by Americans. API believes that the fundamental ability of our membership to transport petroleum on vessels in international trade is seriously impeded by legislation such as H.R. 1517.

H.R. 1517 would violate international law and comity, harm foreign relations with friendly nations, and ignore treaty obligations. H.R. 1517, like its predecessor bills, H.R. 1126 and H.R. 3283 which were introduced in the two previous Congresses, has been unequivocally opposed by all major maritime nations, as well as the European Community. Their fundamental objection lies in the fact that legislative action applying U.S. labor relations and wage/hour laws to alien seafarers on non-U.S. flag vessels would arrogate jurisdiction which, under long established principles of international law and comity, are reserved exclusively to the laws of the flag state.

It would be highly presumptuous for the United States as a port state to impose its own labor relations laws upon foreign nationals on a foreign flag vessel based only on the fact that the vessel happens to trade in and out of U.S. ports. International trade is in constant flux. It involves at least two nations with no guarantee that future trading contacts with any other nation will remain the same. This constant flux has necessitated the exclusive jurisdiction of the flag state over shipboard labor relationships. To do otherwise would have a chilling effect on international trade.

Each country has its own unique laws regulating employment relationships. The labor relations laws of many countries have very little in common with the complex, highly regulated legal structure in the U.S. There would be serious systemic conflicts if the United States were to superimpose its own legal system governing labor relations over that of foreign flag states.

H.R. 1517 would destabilize intergovernmental relationships. Labor problems cannot be effectively regulated by two or more competing sovereign nations. Owners, masters, seamen, and unions would risk running afoul of the laws of one nation, while attempting to honor the law of another. The resulting international conflict would be paralyzing.

The application of U.S. labor laws to foreign-flag vessels can only be viewed as overreaching and highly objectionable. Foreign nations would be inclined to retaliate in kind against U.S. transportation interests. H.R. 1517 would put at risk existing treaty commitments between the United States and foreign nations. Under current treaties and customary law, the contracting parties have agreed to recognize vessels on the basis of the flag they fly and to accord consular officers exclusive jurisdiction over controversies arising out of the internal order of their vessels. Under H.R. 1517, these treaty commitments would break down as nations imposed their own labor law on vessels entering their ports.

H.R. 1517 would destabilize the highly efficient and reliable petroleum transportation system which supplies almost 50 percent of this country's demand. The ultimate losers if H.R. 1517 ever becomes law would be the American consumer.

API respectfully urges that H.R. 1517 be rejected in its entirety.

Statement of Philip J. Loree, Chairman
Federation of American Controlled Shipping ("FACS")
Before The Subcommittee on Labor Standards
of
The House Education and Labor Committee
on
H.R. 1517
May 13, 1993

I appreciate the opportunity to appear once again before your Subcommittee in opposition to the proposal to extend federal labor relations and wage-hour laws to foreign registered vessels. This is an issue with which I have had considerable involvement dating back to the late 1950's, first as a practicing lawyer specializing in labor law and later as an officer of the trade organization representing American companies which own, operate, manage and/or use open registry vessels.

It is also an issue in which the underlying motivation seems really no different today than it was 35 years ago -- it is a continuing attempt by some American maritime unions to extend their power base by seeking to raise the costs of foreign vessels and thereby supposedly making much higher cost U.S. flag ships internationally competitive. As pointed out herein, the unions' competitive problem is not the competition, it is themselves.

In this statement I will begin by discussing how H.R. 1517 differs in two respects from the bill (then H.R. 1126) which was introduced in the 102nd Congress. Then I will set forth the reasons why H.R. 1517 is entirely without merit and thus should be rejected by your Subcommittee. Essentially these reasons can be summarized as follows:

* The bill would flaunt established principles of international law and comity, would result in conflicts of law and foreign relations problems, and would violate U.S. obligations under treaties and consular conventions.

* The bill would do nothing to help U.S. flag vessels, which can only complete internationally with direct or indirect federal subsidies, while it would drive an already declining American controlled open registry fleet out of the international arena.

* The bill would harm U.S. national security and national

defence capabilities by impairing the competitiveness of the Effective U.S. Control fleet.

* The bill would contravene U.S. obligations under ILO Minimum Standards Convention No. 147 which provides an accepted multilateral framework for addressing problems involving substandard conditions for seafarers.

* The bill would invite labor disruptions in U.S. ports and thereby impair U.S. trade and commerce.

A. MAJOR DIFFERENCES BETWEEN H.R. 1517 AND THE BILL INTRODUCED IN THE LAST CONGRESS

Nationality Linkage to Flag

In October 1991, when I appeared before your Subcommittee, the proposal under discussion was aimed essentially at three groupings of foreign flag vessels "regularly engaged" in U.S. foreign commerce: American controlled open registry ships plus passenger vessels and lightering vessels regardless of their ownership. In that testimony I emphasized the inherent unfairness in singling out American controlled vessels and thereby giving a further competitive edge to our foreign competitors, especially at a time when Americans have been losing market share in international shipping because of the 1986 tax law.

Perhaps pointing out the inherent inequity of the earlier bill struck a responsive chord, because the current version adopts a somewhat different approach. Unfortunately, the new version is equally objectionable. American controlled ships would continue to be subject to coverage. The major difference is that the new version would cast an even wider net, thereby ensnaring a substantial segment of the foreign owned tonnage in the world fleet.

This new approach only reconfirms what was all too apparent from the bill in the last Congress: the architects of H.R. 1517 have a woefully myopic and insular view of international shipping. They seem to believe that U.S. laws on nationality of shipowners and seafarers applying to U.S. flag vessels should, in effect, rule the world as well. What they fail to realize is that many nations, acting fully in accord with principles of international law, do not accept the propositions in H.R. 1517 that nationalities of owners and seafarers must somehow be linked to the nationality of the flag state. (For that matter, the United States did not legislate strict nationality requirements for seamen until 1915.) Nevertheless, H.R. 1517 would single out vessels that were not at least 51% owned and 50% manned by flag state nationals.

The contemplated ownership requirement should be considered in the light of the most recent OECD "Review of Maritime Transport" which indicates that at the start of 1992 there was no nationality linkage between owners and flag states for almost half of the tonnage in the world's fleet. The following is a sampling (percentages are rounded off) of the OECD statistics showing the widespread absence of the ownership linkage:

Nationality of Owner	Percentage of Tonnage Under Non-National Flags	Nationality of Owner	Percentage of Tonnage Under Non-National Flags
Greek	56%	German	58%
Japanese	60%	Danish	39%
American	70%	Taiwanese	14%
Norwegian	33%	Swedish	63%
Hong Kong Chinese	88%	French	52%
Chinese	23%	Belgian	97%
British	75%	Dutch	33%
Korean	36%	Swiss	86%

H.R. 1517 would also require each vessel to be at least 50% manned by nationals of the flag state in order to avoid its potential application. The reality is that there is considerable traditional national flag tonnage (e.g., Greek and Japanese) with flexible citizen crewing requirements. There are, in addition, sizable so-called second registers (such as Norwegian and Danish) which exist primarily to permit national flag manning by non-nationals. As a result, it is very possible that the national manning requirement in H.R. 1517 could not be met by perhaps as much as another 25% of the world's tonnage.

The bottom line, then, is that the nationality requirements fashioned by H.R. 1517 could potentially impact on a very substantial portion of the world fleet.

Exemption of Liner Vessels

Since I appeared before your Subcommittee in October 1991 there has been another notable change in the text of the bill which was then before your Subcommittee. The maritime union proponents have made the regularity of engagement in U.S. trade as the cornerstone of their argument why foreign flag vessels should be subject to U.S. labor laws. Among the various vessel types that exist today there is one which by its very nature is keyed to regularity of service. That is the liner vessel, which by definition operates as a common carrier on a fixed, regular schedule.

It would seem logical to believe that if regular engagement in U.S. trade is the major reason why maritime union proponents believe that U.S. laws should be applicable, then the foreign flag liner vessels servicing U.S. ports should logically be prime candidates for coverage of H.R. 1517. But, strangely, the bill excludes all liner vessels. Since there is not a shred of evidence to support the argument that liner vessels across-the-board are somehow more "angelic" in labor matters than all other types of vessels, the reason for this selective exclusion clearly lies elsewhere.

The only plausible explanation is that certain U.S. flag liner companies -- which also control foreign flag liner vessels which are engaged in U.S. trade -- entered into some political log-rolling with the maritime unions representing the crews on their U.S. flag vessels, and apparently succeeded in getting a carte blanche dispensation from application of H.R. 1517. The fact that the union proponents of H.R. 1517 would agree to such an exclusion not only smacks of hypocrisy but also underscores the total lack of merit in their argument that supposedly is grounded on regularity of engagement in U.S. foreign commerce.

B. REASONS WHY H.R. 1517 SHOULD BE REJECTED

I. The Bill Would Contravene International Law and Comity, Exacerbate Foreign Relations With Friendly Nations and Disregard Treaty Obligations

H.R. 1517 would fly in the face of international law, would give rise to some serious problems involving our foreign relations, and would contravene U.S. treaty obligations. The fact that H.R. 1517 would represent a serious breach of international law and practice is underscored by the fact that the bill reportedly was the subject of a Demarche which thirteen European governments plus Japan and the Commission of the European Communities filed last week with the State Department.

The primary reason against unilaterally attempting to apply the elaborate regulatory framework of federal labor relations law and wage/hour law to foreign flag vessels temporarily visiting U.S. ports is rooted in international law and the sovereignty of nations. International shipping has endured many centuries and thus there are long established principles of international law and comity governing jurisdiction over the employment relationship between master and crew. One of the most fundamental principles is that the nationality of the vessel is determined by its flag, and that jurisdiction over the vessel's internal order (including most certainly its shipboard labor relations and minimum wage

payments) belongs exclusively to the flag state.*

There are sound, practical reasons for this rule. Vessels cannot be equated to factories or other essentially permanent installations. Vessels are inherently mobile and typically spend most of their time on the high seas, outside the territorial waters of port states and flag states. Frequently their future trading patterns are unpredictable, and may be determined by a host of diverse factors such as the weather, the change of seasons, new technology, general economic conditions, political changes, labor problems and war -- to mention just a few. A port state has, at best, a transitory interest in a vessel in its territorial waters. Its interest is even less when foreign nationals are employed on board.

It would be, at the very least, presumptuous for a port state to seek to apply its own labor relations and minimum wage laws to foreign nationals on a foreign flag vessel based primarily on the fact that the vessel happens to trade in and out of U.S. ports. By its very nature international trade is not a one-way street. It involves at least two nations and often many others as well, with no guarantee that trading contacts with any of the states will remain the same in the future. The only constant is the vessel's nationality, and that probably explains why over the centuries the exclusive jurisdiction of the flag state over shipboard labor relationships has become so firmly established in international law and comity.

No doubt another reason is that regulatory jurisdiction over such relationships cannot, like a faucet, be turned on and off without giving rise to chaotic conflicts of law, legal uncertainties and shipboard disorder. American labor relations law exemplifies the problem. It is truly sui generis, with its own maze of peculiar yet important rules regulating employment relationships -- rules that are not mirrored by any other maritime nation in the world. Most labor relations laws of other countries have very little in common with our elaborate and highly regulated legal structure. In short, there would be predictable, systemic conflicts if the United States sought to superimpose its legal system governing labor relations on that of the flag states.

Equally noteworthy is the fact that U.S. labor relations law (and minimum wage requirements) are, in large part, prospective in nature. For instance, the American framework of unfair labor practices (e.g., a case involving a refusal to bargain, a discriminatory discharge or an interference with Section 7 rights) generally is remedied at least in part by regulating conduct in the future. In the same vein, a certification of collective

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*See extracts from U.S. Supreme Court decision in Appendix hereto.

bargaining agent and its many ancillary rules (e.g., certification bar) is essentially directed at an ongoing future relationship. The very same can be said for laws and regulations setting minimum wages. In a nutshell, the application of U.S. labor laws to a foreign flag vessel temporarily in U.S. waters would by its very nature seek to regulate shipboard labor relations long after the vessel sailed from the United States.* This means that application of American law predictably would conflict with the law of the flag state not only while the vessel was in U.S. waters, but also while it was on the high seas and in the ports of other countries.

Here it bears emphasis that labor relations matters involving problems of union organization and collective bargaining cannot be effectively regulated by two competing sovereign nations, each with its own concept of how labor-management relationships should function.** At the very least, such relationships would be destabilized, leaving the various parties unsure of what their respective legal rights and obligations actually were. Owners, masters, employees and unions alike would risk running afoul of the law of one jurisdiction while honoring the law of another. The end result would be continuing uncertainty, conflict and disruption -- the very conditions which labor relations laws generally are designed to prevent.

H.R. 1517 would unilaterally export uniquely American labor laws -- an arrogation of jurisdiction which other nations would surely view as overreaching and highly objectionable. Consequently, H.R. 1517 would most certainly give rise to thorny problems involving international relations with friendly allies, and even the possibility of retaliation in kind against U.S. manned vessels.

H.R. 1517 would also be violative of treaty commitments between the United States and foreign nations in which the contracting parties have agreed to recognize vessels on the basis

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*Obviously there is a fundamental distinction between attempting to regulate future shipboard employment relationships and permitting foreign seafarers in certain cases to sue in U.S. courts for unpaid wages or damages resulting from personal injuries. The contract and tort claims relate to past activity and do not purport to regulate future relationships.

**By analogy, similar problems could arise domestically if a state labor relations board and the NLRB, each with different laws and regulations, were permitted to regulate labor relations in the same bargaining unit at the same time. Such a potential conflict has, of course, been obviated by the preemption doctrine.

of whose flag is flown and to accord consular officers exclusive jurisdiction over controversies arising out of the internal order of vessels. In a footnote to his concurring opinion in the landmark 1963 Supreme Court cases,* Justice Douglas declared that the latter provision in both the Honduran Treaty and the Liberian Convention "grant those nations exclusive jurisdiction over the matters here involved." (372 U.S. at 22) The United States has entered into similar treaty commitments with numerous foreign nations.

II. The Bill Would Hurt, Rather Than Help, The Competitive Standing of U.S. Flag Vessels

The sorry fact is that U.S. manned vessels, whether they carry cargo or passengers, have not been commercially competitive on their own in international shipping during our lifetimes. Almost without exception, the only way U.S. manned vessels can make a go of it outside the protected cabotage or domestic trades (where competition from foreign flag vessels is not allowed) is with substantial direct or indirect subsidization from U.S. taxpayers. That is why the United States directly subsidizes most liner vessels with an average subsidy payment of almost $3,000,000 per ship per year. It is why the U.S. taxpayers pay hundreds of millions of dollars each year to ship military cargoes on U.S. manned vessels, and why they pay rates as high as 400% or 500% of world market rates to ship government impelled agricultural cargoes abroad.

The current publicity over the projected high U.S. flag rates for the 75% cargo preference applicable to the $700 million loan program for Russia is just another reminder of the noncompetitive status of U.S. flag vessels in the international arena. Conceivably the added U.S. costs resulting from shipments under this program could exceed $200 million, depending on the actual rate levels which are presently open to debate but could vary from an estimated $25 per ton for foreign flag carriage up to somewhere between $80 and $135 per ton for U.S. flag carriage.

The very fact we make such payments is incontrovertible proof that U.S. manned vessels cannot compete on their own for cargoes or passengers in the international commercial trades. The primary reason why U.S. manned vessels are noncompetitive is that their labor costs exceed comparable costs of typical foreign manned vessels by a factor of roughly five to seven times. The standard of living in this country is high, but quite obviously it is not that high compared to many foreign workers.

Rather than face up to the truth that their own bargaining

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*See Appendix.

excesses over many years are the paramount reason why U.S. manned vessels cost so much to operate, the maritime union proponents of H.R. 1517 seemingly believe that their competitors are to blame. This is analogous to the golfer who finishes last in a tournament and then attributes his poor showing to the expert play of those who posted better scores. Like the golfer who cannot compete, the union proponents of H.R. 1517 would be better advised to work harder at improving their own game rather than pointing fingers at the competition.

Simply stated, H.R. 1517 holds out no promise of more jobs for American seafarers. On the other hand, application of domestic labor relations laws and their potential for labor disputes caused by U.S. maritime unions certainly would make the foreign flag vessels controlled by American companies less competitive. But the number and tonnage of these ships have been dwindling ever since certain 1986 tax law amendments placed them at a severe disadvantage with respect to foreign owned shipping.

The 1986 tax revisions were another brainchild of the same union proponents who are now advocating enactment of H.R. 1517. The tax changes have done nothing for U.S. manned vessels, and indeed have hurt them since they have weakened the American companies which operate both domestic and foreign flag vessels. The tax changes have already deprived the United States of a substantial amount of emergency sealift tonnage as American companies have disposed of their controlled vessels to foreign interests. They have also reduced the number of shoreside jobs for Americans whose companies used to operate those vessels. They have, on the other hand, provided some very desirable market opportunities for foreign controlled shipping. They have only harmed American interests and stand as a sorry example of shooting ourselves in the foot.

H.R. 1517, if ever enacted, would rival the tax changes as a destructive and misguided legislative effort. First, the bill would harm American controlled foreign flag shipping which for decades has been the only realistic and available means by which American shipping and industrial companies can compete head to head, without subsidy of any kind from U.S. taxpayers, against foreign controlled shipping. The bill would simply speed up the transfer of control over such ships to foreign interests whose vessels would then be immune to the labor relations problems inherent in H.R. 1517. Today, at best, the American controlled fleet represents less than 5% of the foreign flag vessels in international shipping against which U.S. seafarers would have to compete, so disadvantaging the American controlled fleet would do nothing for high cost U.S. seafarers. On the contrary, such action could well cost them jobs, because, as noted earlier, many of the companies that would be further disadvantaged also operate U.S. flag vessels and employ U.S. seafarers.

III. The Bill Would Have Adverse National Defense and Security Implications

In addition to its obvious shortcomings with respect to international law, comity, foreign relations and treaty obligations, H.R. 1517 would give rise to consequences that clearly would not serve the best interests of this country. It would discriminate against and thereby economically disadvantage foreign flag vessels beneficially owned by Americans which are under Effective U.S. Control (EUSC) and are relied upon by defense officials to provide a substantial part of this country's sealift needs in time of war or national emergency.

It is instructive how this issue was presented to the U.S. Supreme Court by Solicitor General Archibald Cox in the Amicus Curiae Brief of the United States which was filed with the U.S. Supreme Court in November 1962. Although dated, his presentation of the problem is essentially no different today than it was then, even though today the number of ships is less and the wage cost differentials between U.S. and foreign seafarers are considerably greater:

> "National Defense. The United States is also deeply concerned with the jurisdictional question because of its effect upon the national defense.... According to the records of the Department of Defense, as of September 30, 1962, there were 411 ships registered in Panama, Liberia or Honduras which were under substantial American beneficial ownership and management. Although it would be inappropriate here even to outline defense plans and capacity, it should be clearly understood that the officials charged with responsibility for the national defense at the highest levels hold these vessels to be essential to national security if any of a number of forms of national emergency should develop.
>
> "Under present ownership and registry the vessels are reasonably expected to be available in an emergency, and as such are included in emergency defense planning....
>
> "There is a grave, although not precisely measurable, likelihood that the successful assertion of NLRB jurisdiction over foreign flag vessels would set in train a movement to sell them to foreign owners or transfer them to other foreign registries where they would not be available to the United States in case of emergency.... But although the outcome is uncertain, it is clear beyond reasonable dispute that under present economic conditions the

> assertion of jurisdiction will tend to stimulate the transfer of the vessels to the maritime nations of Western Europe or result in their sale for scrap. And it is utterly baseless for counsel for AFL-CIO to assert (see Brief for the AFL-CIO as amicus curiae...) that such transfers would not diminish the degree of effective U.S. control. Unlike Panama, Honduras and Liberia, other nations to whose registry the vessels might be transferred would not permit the United States control of the vessels in the event of all emergencies; and there are a number of contingencies, primarily involving non-NATO emergencies, in which it would not be adequate to have the vessels part of a NATO pool.
>
> "In sum, it is the considered judgment of the Secretary of Defense that the sustaining of NLRB jurisdiction over any foreign flag vessels would raise grave problems affecting national defense."

Despite never-ending attempts over the years by maritime unions to denigrate Effective U.S. Control policy, American controlled foreign flag shipping made significant contributions to this country's sealift needs in World War II, the Korean conflict and on a commercial basis during the Vietnam war. The most recent reaffirmation of reliance on EUSC shipping came on October 5, 1989 when President Bush approved the National Security Sealift Policy prepared by the National Security Council. The NSC recently released an unclassified summary of the Policy which states that "the United States' national sealift objective is to ensure that sufficient military and civil maritime resources will be available to meet defense deployment, and essential economic requirements in support of our national security strategy." The summary lists Policy guidelines approved by the President, including the following:

> "First, the US-owned commercial ocean carrier industry, to the extent it is capable, will be relied upon to provide sealift in peace, crisis, and war....
>
> "Second, we must be prepared to respond unilaterally to security threats in geographic areas not covered by alliance commitments. Sufficient US-owned sealift resources must be available to meet requirements for such unilateral response.
>
> "Third, in addition to the US flag fleet we will continue to rely on US-owned and allied shipping resources to meet strategic commitments to our established alliances. The Department of Transportation is responsible for ensuring that the

> appropriate legal and procedural mechanisms for exerting effective control over 'effective U.S. control' ships are in place..."

Taken as a whole, the EUSC ships represent sizable capital investments by American companies. If they were driven to extinction by unwise legislative action, it would cost the United States billions of dollars at today's shipbuilding costs to replace them. For this reason alone, H.R. 1517, which is aimed directly at the future economic viability of the EUSC fleet, makes no sense.

IV. The Bill Would Renege On The U.S. Commitment to Adhere To ILO Convention No. 147

There is no subject matter in all of shipping that is more likely to give rise to complaints and allegations of exploitation than shipboard living and working conditions. There are many factors at work here. There are unions from the developed world trying to prevent seafarers from the developing world from pricing them out of the market. There are unions from developing countries interested in organizing crews which pose a potential competitive threat to those unions. There are well-meaning, charitable or church-related organizations which tend to use too broad a brush in characterizing seagoing labor as exploited or working under substandard conditions. Last but not least, there are the seafarers themselves whose proclivities towards voicing gripes and beefs, and graduating sea lawyers from their ranks, are part of the "lore of the sea."

Some of the complaints that emerge from this cacophony of voices are legitimate. Some, indeed, are downright deplorable -- although that number is small compared to the number of ships at issue. The fact remains that shipboard living and working conditions have always produced, and probably always will produce, complaints from various parties -- some serious and many of the garden-house variety.

Many of the cases involving truly deplorable shipboard living and working conditions arise in situations where the owners are in severe economic distress, if not in bankruptcy. In some cases the owners disappear, and in most situations the vessels themselves are of relatively little value. There are even cases where the vessels are effectively stateless, their registries cancelled for serious safety violations or for nonpayment of monies owed flag states. There is very little that can be done in these circumstances other than to arrange for repatriation of the seafarers.

There are also a relatively few cases involving deplorable shipboard living and working conditions that serve to, and can, be

rectified. That these situations do arise form time to time underscores the fact that some flag states and some unscrupulous owners have failed to meet their responsibilities. These are the proverbial "bad apples."

Here it should be emphasized that if H.R. 1517 is intended to help seafarers on such vessels, its attempt to assert jurisdiction over certain American controlled vessels along with certain other vessels is terribly misdirected, because the ships in these categories tend to be the "good apples," not the bad ones.

Responsible ship operators recognize that if the "bad apples" are left unchecked, they will spoil the barrel for the responsible registries and legitimate owners. It was with this reality in mind that I actively supported ratification by the United States of ILO Minimum Standards Convention No. 147, both in encouraging the American business community not to oppose ratification and in appearing as a witness in support of ratification before the Senate Foreign Relations Committee.

In 1988 ILO 147 was unanimously ratified by the Senate by an 84 to 0 vote and then signed by the President. It is now the law of the land. It presents the only sensible and workable approach for a port state to respond to problems involving foreign seafarers temporarily in its waters, bearing in mind that the interest of any port state in remedying shipboard labor conditions involving foreign seafarers on foreign flag vessels is, at best, tangential and, for the most part, humanitarian. This is so because, while a port state certainly has an interest in assuring that seafarers within its jurisdiction are not stranded and left penniless, it has no clearly definable political or economic interest in the shipboard living and working conditions of foreign seafarers so long as they do not, so to speak, come ashore.

Under ILO 147 the contracting parties may, if they so decide, exercise a certain measure of port state control over conditions involving seafarers on foreign flag ships. They may receive complaints, obtain evidence, and prepare official reports as to whether vessels in their waters conform to the standards of the Convention, and to "take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health." The "measures" include detention of vessels until hazardous conditions are rectified. For non-hazardous conditions the port state can formally notify the flag state of such shortcomings and request that corrective action be taken. The port state's authority under ILO 147 to take such action extends to all vessels, regardless of whether the flag states are parties to the

Convention.*

In short, while H.R. 1517 would not even apply to the truly "bad apples" in terms of vessels with substandard employment conditions, there is an internationally acceptable and approved standard by which a port state may appropriately exercise authority with respect to complaints involving working conditions for foreign seafarers on foreign flag vessels temporarily in its waters. In this country the Coast Guard is the agency which has been authorized to exercise such authority. That authority does not involve or require the application of our own domestic labor relations laws, such as contemplated by H.R. 1517. The standards established by ILO 147 are international, not domestic, standards. By its ratification of ILO 147 more than four years ago this country has made a commitment to adhere to the standards and procedures set forth in that Convention. Enactment of H.R. 1517 would attempt to apply domestic standards and thus would effectively constitute a breach of that commitment.

One point that should be noted here is that despite the seemingly hyperbolic and anecdotal descriptions offered by proponents of H.R. 1517 regarding alleged substandard conditions on certain foreign vessels, the fact is that over the past four years there have been only a handful of complaints, at best, filed with the Coast Guard with respect to purported violations of ILO 147. The absence of widespread complaints speaks for itself.

V. The Bill Would Have Adverse Economic and Trade Ramifications

Because most vessels require port and shoreside services of varying kinds they tend to be extremely susceptible to labor disruptions. Depending on the type of vessel, the actions of a

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*The Convention also establishes various minimum standards for flag states which are parties to the Convention. These include the enactment and effective enforcement of laws and regulations relating to safety and competency standards, hours of work, manning, social security measures, and shipboard conditions of employment and living arrangements. The Convention provides that such minimum standards should be equivalent to those set forth in various ILO Conventions listed in the Appendix to the Convention. These ILO Conventions cover such matters as sick and injured seafarers, crew accommodations, food and catering, officer competency, articles of agreement, repatriation, freedom of association and the right to organize. Flag state signatories have other responsibilities such as assuring that adequate procedures exist for the engagement of seafarers and the investigation of complaints. Signatories whose nationals are engaged to work on vessels of other registries have similar responsibilities.

few pickets in denying the services of tugboats, longshoremen, fuel suppliers, etc., can effectively immobilize a ship and prevent it from reaching or departing its berth. There are few other industries which are so sensitive to labor disputes.

The maritime unions in this country have a long record of causing disruptions on the waterfront. During just 4 days in December 1958 they managed to tie up 128 foreign flag ships and thereafter continued sporadically to immobilize individual vessels until the court battles leading up to the 1963 Supreme Court decisions.

H.R. 1517 would give them the license to return to the waterfront and attempt to shut down ship operations of their choosing. The wisdom of allowing this kind of activity in a country which is the world's preeminent trading nation is highly questionable, particularly when internationally about 80% of its liner trades, 99% of its bulk trades and 100% of its passenger trades are handled by foreign flag vessels. The real losers, if H.R. 1517 ever became law, would be American importers and exporters, including farmers, American passengers interested in enjoying uninterrupted vacations sailing from U.S. ports, the ports themselves, and indeed American consumers generally. All benefit in one degree or another from the availability of the efficient, reliable and reasonably low cost oceanborne transportation services which are presently available without disruption or interruption. H.R. 1517 would significantly impact on those services and for that reason alone should not be supported.

Conclusion

It is respectfully urged that H.R. 1517 be rejected in its entirety.

APPENDIX

Extracts from Opinion by Justice Clark in McCulloch v. Sociedad Nacional, 372 U.S. 10 (1963) [Footnotes omitted.]

> A corporation organized and doing business in the United States beneficially owns seagoing vessels which make regular sailings between United States, Latin American and other ports transporting the corporation's products and other supplies; each of the vessels is legally owned by a foreign subsidiary of the American corporation, flies the flag of a foreign nation, carries a foreign crew and has other contacts with the nation of its flag. The question arising is whether the Act extends to the crews engaged in such a maritime operation

(Id. at 12)

* * *

> While here the Board has violated no specific prohibition in the Act, the overriding consideration is that the Board's assertion of power to determine the representation of foreign seamen aboard vessels under foreign flags has aroused vigorous protests from foreign governments and created international problems for our Government.

(Id. at 16-17)

* * *

> Six years ago this Court considered the question of the application of the Taft-Hartley amendments to the Act in a suit for damages "resulting from the picketing of a foreign ship operated entirely by foreign seamen under foreign articles while the vessel [was] temporarily in an American port." *Benz v. Compania Naviera Hidalgo, supra*, at 139. We held that the Act did not apply, searching the language and the legislative history and concluding that the latter "inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions." *Id.*, at 144.

(Id. at 18)

* * *

It is contended that this case is nonetheless distinguishable from *Benz* in two respects. First, here there is a fleet of vessels not temporarily in United States waters but operating in a regular course of trade between foreign ports and those of the United States; and, second, the foreign owner of the ships is in turn owned by an American corporation. We note that both of these points rely on additional American contacts and therefore necessarily presume the validity of the "balancing of contacts" theory of the Board. But to follow such a suggested procedure to the ultimate might require that the Board inquire into the internal discipline and order of all foreign vessels calling at American ports. Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well. In addition, enforcement of Board orders would project the courts into application of the sanctions of the Act to foreign-flag ships on a purely *ad hoc* weighing of contacts basis.[8] This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice. The question, therefore, appears to us more basic; namely, whether the Act as written was intended to have any application to foreign registered vessels employing alien seamen.

(Id. at 18-19)

* * *

We continue to believe that if the sponsors of the original Act or of its amendments conceived of the application now sought by the Board they failed to translate such thoughts into describing the boundaries of the Act as including foreign-flag vessels manned by alien crews.[10] Therefore, we find no basis for a construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag contrary to the recognition long afforded them not only by our State Department[11] but also by the Congress.[12] In addition, our attention is called to the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship. See *Wildenhus's Case*, *supra*, at 12; Colombos, The International Law of the Sea (3d rev. ed. 1954), 222-223. The possibility of international discord cannot therefore be gainsaid. Especially is this true on account of the concurrent application of the Act and the Honduran Labor Code that would result with our approval of jurisdiction. Sociedad, currently the exclusive bargaining agent of Empresa under Honduran law, would have a head-on collision with N. M. U. should it become the exclusive bargaining agent under the Act. This would be aggravated by the fact that under

> Honduran law N. M. U. is prohibited from representing the seamen on Honduran-flag ships even in the absence of a recognized bargaining agent. Thus even though Sociedad withdrew from such an intramural labor fight—a highly unlikely circumstance—questions of such international import would remain as to invite retaliatory action from other nations as well as Honduras.

(Id. at 20-21)

* * *

> The presence of such highly charged international circumstances brings to mind the admonition of Mr. Chief Justice Marshall in *The Charming Betsy*, 2 Cranch 64, 118 (1804), that "an act of congress ought never to be construed to violate the law of nations if any other possible construction remains . . . ." We therefore conclude, as we did in *Benz*, that for us to sanction the exercise of local sovereignty under such conditions in this "delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed." 353 U. S., at 147.

(Id. at 21-22)

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