MARITIME TRANSPORT POLICIES OF THE REPUBLIC OF SOUTH AFRICA SINCE 1994: CHALLENGES AND OPPORTUNITIES FOR THE NEXT TWENTY YEARS

D NTULI

Alternate Permanent Representative of South Africa to the
International Maritime Organization
South Africa House
Trafalgar Square
WC2N5DP
United Kingdom

ABSTRACT

This paper looks at maritime policies adopted by the government of the Republic of South Africa in the past twenty years and considers how comprehensive and effective were these policies in meeting the socio-economic objectives of the democratic state and in particular whether these policies have been successful and therefore resulted in the growth and development of the industry. The paper makes a point in that, for the fact that maritime transport is international in nature the standing of the Republic in comparison to its trading partners specifically in maritime services and equipment has been insignificant over these years. The paper calls for the adoption of further policy and strategy measures that are more robust. The country has to revamp the manner in which maritime transport domain is regulated and managed within government.

By default this paper also highlights the reduced significance that maritime transport industry has endured in South Africa over the last 20 years, despite several policy attempts to increase the understanding of its worth to the South African economy. This situation is largely due to the fact that, from a governance point of view, some critical maritime responsibilities are fragmented between various government departments.

The Reconstruction and Development Programme had provided as follows:

'Harmonization of infrastructure, legal and operational aspects of regional Southern African transport in respect of Aviation and Maritime must be considered a priority.'[1]

The White Paper on National Transport Policy of 1996 referred to here as 'the white paper, was approved by Cabinet in September 1997. The Maritime Transport policies enshrined in the White Paper were a product of direct input by a Working Group convened and chaired by the retired Professor John Hare of the school of Shipping Law, University of Cape Town. In greater part the bulk of the output was informed by contributions notably provided by Professor Bernal Floor who is the author of the 'Floor Report'[2].

The White Paper defined Maritime transport, 'as encompassing all forms of transport by sea, intermodal links and inland ports but identified that it had certain fundamental differences from other modes of transport in that it catered almost entirely for the freight market, and offered no significant domestic passenger carrying capacity and that it operated in an international environment and therefore was subject to considerable competition and economic pressures from foreign competitors.'[3]

The Vision of maritime transport sector as defined by the 1996 White Paper was:-

"To encourage and support the SA maritime transport industry in a manner which underpins the four fundamental objectives of the RDP, gives effect to the overall vision of transport.

The Strategic objectives are articulated as follows:

1. To facilitate and enhance the expansion of international trade and tourism in general, and exports in particular.

2. To ensure that economic decisions are, as far as possible, left to market forces.

3. To promote the development of an efficient and productive South African maritime industry capable of competing on international markets

4. To maintain control over maritime services within a well-defined regulatory framework.

5. To promote international relations with other countries and international organisations involved in maritime activities.

6. To ensure cost effective and efficient shipping operations. " [4]

It is my intention to present policies adopted and follow it up with an assessment of what was achieved or undertaken towards implementation of the said policy

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[1] ANC, The Reconstruction and Development Programme, (Umanyano Publication, 1994)p.38

[2] Floor, B National(Editor) Commission of Inquiry into a National Maritime Policy for the Republic of South Africa (National Department of Transport, 2003).

[3] http://web.uct.ac.za/depts/shiplaw/witpaper.htm White Paper on National Transport Policy Department of Transport, Pretoria 20 August 1996

[4] Ibid

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Proceedings ISBN Number: 978-1-920017-61-3
Produced by: CE Projects cc

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On Economic principles and Port operations and administration, the White paper had provided that:-

"Maritime transport policy should attempt to foster and maintain a competitive climate wherever appropriate and the Government will avoid protectionist maritime practices and maintain an "open ports" policy and therefore the following policies were pronounced

1. A port authority (or authorities) with specific responsibilities for the maintenance and development of port infrastructure will be established.

2. Since it will itself be a monopoly, the port authority will be regulated by an independent regulator.

3. The port authority will be independent of any port operating entity (or entities).

4. In order to promote low costs, high level of service, and shipper choice in the port operations, a competitive environment will be created by enabling private enterprise to offer port services.

5. All stakeholders, including all levels of government, will be consulted in the planning of ports."[5]

The ports sector received a lot of pressure to open up this infrastructure for private sector participation. In 2002, this pressure resulted in the Department of Transport initiating consultations to develop a Ports Policy for the Republic. It was envisaged that such a policy will contribute in the effective regulation of the Port Sector environment and possibly result in the much awaited corporatisation of the National Ports Authority and resultantly, the concessioning of the Durban container terminal.

The process was fast-tracked such that by 8 August of 2002, government issued a notice[6] informing the public and stakeholders of the Commercial Ports Policy which was subsequently declared, a White Paper on Commercial Ports Policy. Soon thereafter, the drafting of ports legislation commenced in 2003. With negotiations and consultations lasting for about 2 years, National Ports Act, Act No.12 was adopted in 2005[7]. Although it can be suggested that the implementation of the Ports Act is still on course, the challenge still remains the full corporatisation of the National Ports Authority outside of Transnet. There has always been great reluctance within government to realise the full implementation of this policy provision. The longer it stands un-implemented it reflects badly on the ministries responsible for the full implementation of the relevant provisions of the Ports Act.

The other institutions like the Ports Regulator and the Port Consultative Forums are fully operational.

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[5] http://www.transnetnationalportsauthority.net/DoingBusinesswithUs/NationalPortsAct/Pages/Port-Legal-Framework.aspx

[6] Government Gazette Vol. 446 No. 23715, 8 August 2002, GENERAL NOTICE, Notice 1409 of 2002

[7] Government Gazette Republic of South Africa Vol. 482 No. 27863 Cape Town 4 August 2005

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It is therefore safe to say that this policy has not been fully implemented due to the changed priorities of government. It should also be stated that the ports sector in South Africa is generally performing optimally well. The introduction of the Ports Regulator has brought some comfort to port customers in that they now have an institution that can put into scrutiny some of the decisions of the Landlord.

On Trade and cargoes, the White paper had provided that:

1. Government is committed to the promotion and continued development of regular shipping services;

2. 'Commercial decisions will as far as possible be left to market forces…'

3. 'Government will promote an interdepartmental initiative to educate exporters of SA goods on the advantages of shipping their cargoes on SA vessels…' [8]

In the area of trade and cargos, although not coordinated, government through various mechanisms has continued to promote regular shipping services between South Africa and its major trading partners. The policy has in all possibilities left all decisions to market forces to the extent that cargo interests are free from any interference from government in freight negotiations. The question however is the extent to which this laissez faire approach is beneficial to the economy. There is a strong argument based on statistics that very little has changed both in terms of volume and type of cargo handled by almost all foreign carriers calling at South African ports.

The *Table 1* below shows that between 2003 and 2010 port calls have fluctuated between 12 and 14 thousand vessels of gross tonnage, averaging between two hundred and thirty nine (239) to, three hundred and eleven (311) million tonnes of cargo. The difference in these statistics is insignificant and confirms that port traffic has been a straight line curve. We can make a few assumptions from these figures that all the ships are foreign owned and flagged.

Year	Port calls	Cargo in GRT
2003	14,311	239,987,027
2004	13,284	241,521,696
2005	13,927	256,650,759
2006	14,191	264,058,969
2007	13,152	279,794,829
2008	12,884	288,820,270
2010	12,147	311,599,360

Table 1: Annual port calls at SA Ports[9]

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[8] http://web.uct.ac.za/depts/shiplaw/witpaper.htm White Paper on National Transport Policy Department of Transport, Pretoria 20 August 1996

[9] Table created using Transnet published data on port call

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Table 2 below provides demographic and fleet comparison between BRICS partners[10]

	Population	Maritime Governance	Square kilometres	Length of coastline (km)	Merchant fleet
Brazil	199,321,413	Federal	8,514,961	7,491	109 (50)
China	1,343,239,923	Central	9,596,961	14,500	2.030 (3)
India	1,205,073,612	Federal	3,287,263	7,000	340 (29)
Russia	142,517,670	Federal	17,098,242	37,653	1.143 (11)
South Africa	48,810,427	Republic	1,219,090	2,798	3 (136)

The White Paper had envisaged government playing a role in the initiative to educate exporters of SA goods on the advantages of shipping their cargoes on SA vessels or on CIF terms. Not much of this happened because it has been very clear that the approach to resolving this challenge of the economy was not receiving the highest level of attention it deserves. The non interventionist maritime policy has failed the Republic's chances of transforming the sector more particularly in germinating ship ownership by South African registered companies. If we are to remain a leader in the continent, this will have to change very soon.

On Operation of ships, the White paper had provided:

1. 'The disincentives facing coastal shipping in relation to other transport modes and foreign competition will be addressed;

2. Cabotage options will be investigated and monitored in the light of changing international cabotage practices and attitudes.

3. South Africa will strive to increase its share of liner shipping, and will monitor its options in relation to the UNCTAD Code in the future.

4. Research will be undertaken to establish how other nations have successfully increased their market share in the shipment of bulk products and to seek acceptable ways of emulating this.

5. The scope for bilateral shipping agreements which will enable South African shipping interests to access markets which are currently inaccessible will be explored.

6. Bilateral shipping or taxation agreements will be negotiated with countries which levy freight taxes on non-resident ship owners so as to eliminate or reduce foreign taxes.' [11]

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[10] Table created using published data sourced from the CIA published data

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Although the White Paper had envisaged that a study was to be undertaken in order to understand how to increase our market share in the shipment of bulk products and to seek acceptable ways of emulating this, this had not been done. A decision to position maritime transport in trade negotiations at all levels including at bilateral levels in order to enable our shipping interests to access markets which are currently inaccessible has not been well coordinated. It is in this area where the policy has some contradictory elements in that in key areas it promotes 'non interference and in other areas anticipates some form of State intervention, like in the area of bilateral relations. The issue of bilateral shipping or taxation agreements as pronounced by the White Paper to levy freight taxes on non-resident ship owners has also not been investigated.

It can be concluded here that none of the above policies were fully explored for implementation. The lack of decisions and plans to implement these policies causes delay in the transformation of the sector and by extension stifles growth of the maritime sector.

On Ship financing, registration and the Fiscus, the White paper had provided:

1. 'The Government will promote interdepartmental and private initiatives to ensure that administrative, fiscal and legal inhibitors to the development of the SA register and its ancillary services are removed.

2. Fiscal aspects affecting shipping will be reappraised on an interdepartmental basis with a view to initiating change where appropriate. '[12]

Treasury has now amended Section 9D of the Income Tax Act of 1962 by introducing provisions which now apply in respect of South African ships involved in international shipping:

- All are now exempted from normal tax, capital gains tax and dividends tax;

- Exemptions from withholding tax on interest payable to foreign financial institutions which finance construction and improvement of South African ships

- Exemptions from normal tax in respect of all officers and crew employed aboard South African ships involved in international shipping, including South African citizens

Notwithstanding positive welcome and the potential these amendments have in contributing to the growth of the ship register and rejuvenating the industry, the exclusion of coastal shipping has been criticised by local experts.

The review of the Admiralty Jurisdiction Act to deal with shipping related concerns as published in 2010 has helped solve some of the outstanding issues necessary to restructure industry. Government will therefore need to embark on a major marketing and promotion of South Africa as a flag of choice for ship owning community. South African ship owners as long as they provide international services will benefit. These measures if implemented well has the potential to transform the face of shipping in the country

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[11] http://web.uct.ac.za/depts/shiplaw/witpaper.htm White Paper on National Transport Policy Department of Transport, Pretoria 20 August 1996

[12] Ibid

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On the operation of ships no initiative to address disincentives facing coastal shipping as identified by the White Paper was ever proposed. Instead government and interested departments are engaged in fresh consultations to promote coastal shipping. There is currently a debate on the validity of the cabotage propositions. The Revised African Maritime Transport Charter approved adopted by the AU in 2010 in Kampala, Uganda[13] promotes vigorously cabotage policies and South Africa will in the near future be expected to provide leadership in this area

In actual fact, if the Charter became law of the continent, that on its own will be an encouragement to Member States of the Union to implement it.

On Safety at sea and administration, the White paper had provided that:

1. 'Government will improve the performance of Port State Control (PSC);

2. The resources of the Chief Directorate: Shipping will be increased to enable it to deal satisfactorily with all maritime matters, including PSC and the revision of legislation, to which end attention will be given to the creation of a Maritime Safety Authority as an option.

3. Government will consider the creation of a statutory National Navigation Authority under the auspices of the Department of Transport.

4. Although Government participation in salvage, directly or indirectly will be discouraged as being a disincentive to the investment of the private sector in the industry, the State will stimulate investment from the private sector in the tug and salvage industry'.[14]

A lot of progress was achieved notably following the decision of 1998 to establish the South African Maritime Safety Authority (SAMSA) which is the agency responsible for the port state control functions on behalf of government. SAMSA's Port State Control capability and management as well as management and coordination of Search and Rescue are globally recognised. Although provided for in the White Paper, there are no plans at this stage to establish the statutory National Navigation Authority.

The white paper had discouraged government from being involved in the salvage activities, it should be stated here that Government has strategically been involved in the provision of these services through a contract with a major salvage company which has provided a stand-by tug and a trading tug whose work has helped to raise the much needed revenue to finance this very expensive operation. However with the demise of the Tugboat Woltemade, the advantage of South Africa to have this additional facility of a trading tug has now ceased. Only 1 tug is available as a stand-by service.

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[13] http://www.au.int/en/content/revised-african-maritime-transport-charter

[14] http://web.uct.ac.za/depts/shiplaw/witpaper.htm White Paper on National Transport Policy Department of Transport, Pretoria 20 August 1996

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On Employment, the White paper had provided that :

1. 'The Department of Transport will liaise with other Departments of Government to promote ensure that seafarers employed by SA owners and operators are afforded the same rights and protections as other workers,

2. Education and training must comply with domestic and international standards as defined and required in the SA Qualifications Authority Act and the STCW convention. Whilst Government, through the DoT will continue to act as the competent authority administering the certification of seafarers in terms of the STCW, Government will also work with and support the Maritime Industry Training Board in its functions'[15]:

All legislation governing South African workers is extended to seafarers. The strong involvement of Unions in the ports sector particularly on the operations side, to an extent has created better understanding between the workers and port management. Although the issue of labour broking is still prevalent in the port environment, however the casualisation of port employment is slowly reducing. Training and retraining of workers has improved with the establishment of the Maritime Chamber within the Transport Sector Education and Training Authority. The marketability of South African seafarers is constrained by very strict and protective labour practices and it is essential that a degree of flexibility be considered.

The conversion and commissioning of the Agulhus to a Training ship must be welcomed. However, if no sustainable funding is provided and as well as provision of secured employment of cadets coming out of the scheme, this may end up being an unsustainable venture. SAMSA and the DOT need to continuously monitor the project and devise a strategy on the future of the initiative when there is still time.

South Africa has remained on the White List in terms of her compliance with STCW Convention standards of competence and will remain so in the future. SAMSA is coordinating on behalf of government the training and certification of South African Seafarers;

With regard to Maritime Portfolio in Government, the following observation is made

The Maritime Transport Branch within government is the centre for all aspects of maritime policy, strategy and governance. In order to ensure an environment that is conducive to the objective of rejuvenating the maritime transport portfolio in the country, the Department needs to inject the Maritime Branch with suitably qualified officials so that the Branch is able to provide leadership on all matters of maritime concern. This is highly essential if we are to realise South Africa becoming an international Maritime Centre in Africa. Where necessary, skilling and up-skilling of existing personnel to meet government's macro policies towards shared growth and development in the industry has to be instituted.

The Department will need to have a sound governance arrangement with all of its maritime transport sector agencies. The Department is accountable for their efficient operation as they are an extension of the arm of government.

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[15] http://web.uct.ac.za/depts/shiplaw/witpaper.htm White Paper on National Transport Policy Department of Transport, Pretoria 20 August 1996

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Way forward

From the above analysis it is quite clear that for the industry to be fully transformed we need some degree of intervention to kick-start development and growth of the sector. It is also becoming evident that there is a need to develop and adopt a comprehensive maritime transport strategy up to 2030 to implement fully the provisions of the White Paper on transport policy for the country and that a review of the policy in the medium term to address emerging trends in the global maritime sector be initiated.

The Maritime Agenda Strategy to address the following areas:

●To develop and grow South Africa to be an international Maritime Centre (IMC) in Africa serving its maritime transport customers in particular and world trade in general.

●To contribute in Government's efforts of ensuring the competitiveness of South Africa's international trade by providing customer focussed maritime transport infrastructure and services through an innovative, safe, reliable, effective, efficient profitable and integrated maritime supply chain infrastructure and systems;

●To promote the growth and broadened participation of local entrepreneurs in the shipping industry and ship acquisition and ownership while vigorously through incentives and continuous improvement in ship registration promote the increase of ships under the South African flag registry;

●To provide guidance to the maritime transport sector customers with regard to institutional arrangements, governance and regulatory interventions while ensuring effective and efficient co-ordination across government on matters of common interest to the growth of the maritime transport sector; and

●To provide a clear framework around which operators, customers, investors and funders can freely, without counter-productive restrictions, participate in maritime transport market so as to improve growth, performance and competitiveness of the Maritime Transport sector.

●To establish where feasible a sustainable funding and financing mechanism and or facility for the growth of the broader maritime transport sector to facilitate strategic infrastructure development and possible acquisition of ships and equipment necessary to meet the needs of customers in particular and the South African economy in general.

●To create and enhance viable and sustainable opportunities for historically disadvantaged entrepreneurs, women and youth to participate in maritime transport initiatives.

We need to without any further delay

1. Ratify the African Maritime Transport Charter because with it we can then legislate for all the transformational provisions in it;

2. Develop and implement comprehensive strategy as our Maritime Agenda 2030 to implement existing policies.

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Conclusion

In this paper I have been able to identify key policy pronouncements of the Republic of South Africa since the advent of democracy in 1994. I have established that the major maritime policy development dates back to the adoption of the White Paper on National Transport policy and that any further policy was an elaboration of what was contained in the White Paper. I have discussed the status of implementation of maritime policies as contained in the White Paper on national transport and reached conclusions that the most significant implementation of that policy was on the enactment and implementation of the of the South African Maritime Safety Authority Safety Act, of 1998 and the adoption and implementation of the National Ports Act, 2005 and now recently the introduction of the Shipping Tax incentives which it is hoped could change the face of shipping in South Africa if managed well. The paper has further concluded that South Africa requires urgently a comprehensive maritime strategy from now up to 2030 in tying up all the loose ends towards the full realising of the vision, mission and objectives of the White Paper.

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