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Annual Dinner of the Liberian Shipowners' Council Ltd.,  
Hamburg, 29th October 1980.

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Speech by Mr. Richard Burke,  
Member of the Commission of the European Communities.

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I am very happy to find myself in this great port city again this evening and to have the pleasure and honour of saying a few words at this annual dinner of the association of owners and operators of Liberian flag shipping. Let me say at once, Mr. Chairman, how touched I am by your very kind words about myself. You referred to the wide spread of my portfolio in the Commission. I will only say that the hours I have been able to spend on shipping have been among the most stimulating and rewarding of all those I have devoted to Commission business over the last four years, and that, although my mandate has only two months to run, I do not feel that my work on shipping is over yet.

The rapid growth in the volume of tonnage under the Liberian flag, to a total far greater than that flying any other flag, has clearly been one of the most striking features of the shipping scene in recent years. In terms of gross tonnage the Liberian fleet is in fact larger than the combined fleets of the nine countries of the Common Market - though the Community will of course recover a comfortable lead when Greece becomes a member in just two months time! This development of Liberian flag shipping, which has been the major contribution to the striking growth of the open registries over the same period, has of course been controversial; and a question mark currently hangs over the future of the open registries as a result of the raising of this subject in UNCTAD - a matter to which you referred in vigorous terms, Mr. Chairman.

There may be general relief around the tables if I say at the outset that the Commission has no formal policy on the delicate subject of the open registries. Indeed, the question has never been discussed by the Commission as such, that is, by myself and my twelve colleagues, though developments are obviously followed closely by our Transport Directorate-General. My own tentative view would be that there is at this time no sufficient reason for the Commission to dissent from the line taken by the majority of OECD countries in current discussions in UNCTAD, that is, that any idea of changing the world's present system of ship registration would need to be examined with considerable care.

In particular, it seems to me that the popular claim that there should be a "genuine link" between a ship and the administration whose flag it flies requires careful examination. We need to be quite clear what we mean by a "genuine link". This requirement can so easily be used to give respectability to a narrow nationalistic approach, and a Member of the Commission should be the last person to advocate that. Among the remarkable freedoms for which the European Community stands and the Treaty of Rome provides, in a world which on the whole certainly does not seem to be getting less nationalistic, are the free movement of workers and capital, together with freedom of establishment; in other words, the right for a citizen or a company from one Member State to set up business in another, under the same conditions as the

natives, so to speak, and without the fear of being rejected on the grounds of having the wrong nationality. Individuals and companies within the Community are constantly making use of these important freedoms.

The Commission, therefore, suffers no sense of shock or outrage when it notes that the great bulk of Liberian flag shipping is not owned by Liberian nationals, or by companies owned and controlled by Liberians. We do not feel that the link between the ship-owner and the country of registry need require any particular national element in the ownership.

Nevertheless, Mr. Chairman, I do feel that every ship ought to be subject to the effective control of the public authorities as regards matters relating to safety, pollution prevention and conditions on board. Now, there are shipping administrations in the world whose degree of control over the conditions prevailing on the ships flying their flag seems certainly to be incomplete. This can be the case with traditional flags as well as with the open registries, and there may be many reasons for it. The maritime administration of the country may be small; the volume of its shipping may be large, and it may be operating almost exclusively in the cross-trades, rarely visiting home ports. In these circumstances a heavy burden rests on the owners, operators, masters and officers themselves to ensure, in the

public interest, that their ships observe in practice the accepted international standards, even in cases where the flag state may not succeed in enforcing these itself. It is, I am sure, fair to say, in passing, that the combined efforts in recent years of the Liberian shipping administration and Liberian owners and operators have done wonders for the image of the Liberian fleet, and I was particularly pleased to hear of the Liberian government's very recent decision to ratify, and, I am sure, firmly enforce, a further series of key international Conventions.

The fact remains that a proportion of the world's shipping can in practice operate free of effective enforcement by the flag state of international standards for the vessel and its crew. And a further proportion of that tonnage is in fact sub-standard in the sense that it does not meet the standards set in the international Conventions on shipping safety and pollution prevention.

I do not want to exaggerate. I do not know what proportion of the world's shipping is sub-standard in this sense. Perhaps just a few per cent. Nevertheless, hair-raising cases do crop up not infrequently, to judge by the "deficiency reports" submitted to IMCO; and one does find oneself wondering whether such cases could be expected to be met with in the case of any other mode of transport.

Mr. Chairman, the current situation in the world as regards shipping accidents and losses and pollution from ships is surely far from satisfactory. The loss record for shipping was worse in 1978 and 1979 than in previous years; in particular a substantial number of large tankers were lost. Some cases, such as the "Amoco Cadiz" and the tragic loss of the "Betelgeuse" with so many lives in my own country, have penetrated deep into the consciousness of the general public, and there is now widespread general awareness in the Community of the problem of substandard ships, substandard crews and substandard shipping operations, and of the threat which these pose to seafarers and to the marine environment in the narrow, crowded seas and rivers of the Community, at a time when so many ships are carrying polluting or dangerous cargo.

The "Amoco Cadiz" disaster led the European Council of Heads of State and Government to call on the Community to play its part in the search for greater shipping safety and reduction of marine pollution. And, since March 1978, the Council of Ministers has adopted no less than seven items of legislation in this field. As for the future, the Commission believes that the Community can play a particularly useful rôle in the field of practical enforcement by the Member States, as port states, of the shipping safety and pollution prevention standards set in the range of international Conventions which are in force at any given time.

I suggested just now that not all countries of registry succeed in ensuring that the shipping under their flags meets these international standards. Happily enough, the Conventions themselves, that is, the right for a government to ensure that foreign shipping using its ports comes up to the international standards in force.

Now the Member States of the Community are in a particularly strong position to make the most of their rights as port states in the interests of shipping safety and pollution prevention. Because of the Community's pre-eminence in international trade, the shipping of all nations visits our ports. Indeed, I believe that up to 40 per cent of all port calls world-wide may be made in Europe. At the same time, most of our Member States have a maritime tradition, with substantial fleets of their own and significant skilled resources for this enforcement task.

It is against this background that the Commission sent to the Council of Ministers in July a proposal for a Council Directive on port state enforcement. This Directive would establish a series of procedures which the Member States would operate and which would be designed to maximise the scope for identifying apparently sub-standard ships visiting Community ports and to ensure that these ships are then inspected and required to put deficiencies right.

I do not want to give the impression that port state enforcement of this kind would be new to the Community. As I said just now, all our maritime administrations already have the right and the power to ensure that visiting shipping is up to standard. However, in practice they have a great deal of freedom as to what use they make of this power. Some Member States manage to do considerably more port state enforcement than others. The consequences of this are, first, that the maximum possible effort is not being devoted to this task overall, and second, that there is some danger of shipping movements being diverted from the countries which take port state enforcement more seriously to those which take it less seriously. So another purpose of the Commission's new proposal is to bring each Member State to approach port state enforcement in substantially the same way.

Article 1 of the draft Directive states that the purpose of the instrument would be to require the Member States to provide, as port states, for the identification and inspection of sub-standard ships and the remedying of deficiencies. This with a view to ensuring compliance with international standards for shipping safety and pollution prevention. The draft goes on to make clear that the standards to be enforced would be those laid down in the range of IMCO Conventions and other key shipping safety and pollution prevention Conventions in force at any given time. For example, the list would today include the 1966



Load Lines Convention and the SOLAS Convention of 1974, because these are both now in force, but it would not yet include the MARPOL Convention or the Convention on Standards of Training and Watchkeeping, because these are not yet in force. The idea is that as each such Convention came into force internationally it would take its place among the set of Conventions to be applied by the Member States as port states.

The draft Directive also makes it clear, and this is an important point, that shipping from a country which has not yet ratified a Convention should not gain any advantage from this, if that Convention is nevertheless in force internationally.

The draft Directive goes on to propose a series of procedures designed to bring about a situation in which substandard ships visiting Community ports would be identified as such, and would have to remove the specific deficiencies which they exhibited in relation to the requirements of the Conventions in force. First, incoming ships would complete a declaration giving basic information about themselves as well as about the nature and expiry dates of the official certificates issued to them under the Conventions, and about a number of other important papers. For example, they would be required to state whether up-to-date charts were on board for the intended voyage. The Commission feels that it will be salutary for every ship to have to make this statement which would be lodged with the authorities of

the port state. Each ship would in this way be brought into contact with the safety authorities of the port state concerned. These authorities would then decide, on the basis of their examination of some or all of the declarations, together with any other information which they might have, what ships to board for the purpose of examining the certificates themselves - taking full advantage, in so doing, of the opportunity which a visit on board gives for noting anything which might suggest that a ship does not measure up to the requirements of the Conventions.

The Directive would go on to provide that, wherever the ships' or crews' certificates were missing or invalid, or wherever the port state had clear grounds for believing that the condition of the ship or of its equipment did not correspond substantially with the requirements of a Convention in force, the ship should be inspected and any deficiencies thus revealed should be rectified, and ship being detained if necessary meanwhile.

Additionally, the draft provides for the Member States, in carrying out its provisions, to pay special attention to categories of ship, such as the smaller, older ships, which experience has shown may, on average, more often be sub-standard. It would also require incoming ships themselves to inform the competent authorities of the port state concerned of any deficiencies which might put safety or the environment at risk, and it would give pilots the task of reporting in on any deficiencies which they noted in the normal course of their duties and which they thought might prejudice the safe navigation of the

The Directive would also provide for the establishment of a no doubt computer-based shipping information system designed to hold information about ships likely to visit Member State ports. The enforcement authorities would have access to this data bank and this should enable them to deploy their limited resources for port state enforcement in the most effective way, through enabling them to concentrate their attention on those ships where it might seem more likely that there would be something amiss. The proposed Directive also includes provision for cost-covering fees to be levied in cases where ships have been inspected and deficiencies justifying detention have been found; and for the Member States to ensure that their national law provides, in case of violations of the Conventions, penalties sufficiently severe to act as a deterrent. The Directive would additionally require the Member States to re-examine from time to time whether they are making the best use of the resources of the European classification societies, as their agents for enforcement work, again in attempt to maximise the effort available for this task. Finally, it provides for arrangements to be made with non-Member countries such as Norway and Sweden, with a view to their adopting similar port state enforcement procedures, thus extending the area of Europe over which port state enforcement would be taken seriously and approached in a unified manner.

Mr. Chairman, the Commission believes that its proposal is realistic and important. It comes at a time when the European Community is seriously concerned about the casualty and pollution situation in shipping. It does not constitute a piece of unilateralism, since it would simply organise and maximise the use, Community-wide, of Member States' existing powers, and would profit from the fact that the world's shipping comes to Community ports.

We have not proposed action at Community level in this area simply because the Common Market exists and must be seen to be doing something, but because the use of the Community dimension, and of the Community's legislative processes, can, we believe, stiffen up and unify Member State action in such a way as to make of the Community, and wider, an area to which it would be in no shipowner's interests to operate sub-standard ships. At the same time, operators whose ships meet the current international standards would have absolutely nothing to fear.

In urging the Council of Ministers over coming weeks to adopt its proposal, the Commission needs the support of all responsible shipowners; indeed, it must be in every responsible shipowner's interests to see an end to the operation by his competitors of sub-standard ships. I have been greatly encouraged this evening, Mr. Chairman, to note your Council's support for fair,

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(flag-blind)

flag-blind port state enforcement of international standards. I might also take this opportunity of thanking very warmly the shipping administration of the German Federal Republic, our host country this evening, for the support which it is currently giving to the idea of realistic Community legislation in this field. This support was expressed most recently during my talks with Minister Ruhnau in Bonn yesterday. I am sure that together we can get on to the Community's statute book in the near future, a measure which will make a really significant contribution in the search for safer shipping and cleaner seas.

Mr. Chairman, I have chosen to devote this speech to the problem of Port State Enforcement of Maritime Safety standards because I was fortunate enough to find an interested audience; because I happen to be meeting you in one of the great European ports - where, incidentally, very high standards in this field have always been maintained; and because the issue is close to me personally in these closing months of my mandate as Commissioner. I am sorry not to have been able to dwell on some other topics of strong mutual interest, including some which you, Mr. Chairman, have raised yourself in your speech.

Among these is the problem of the penetration of certain of our trades by the Soviet merchant marine, using - as I believe - unfair methods of competition. Mr. Chairman, you employed a pugilistic metaphor to describe my involvement in that

disagreement. This was rousing stuff, and I appreciate the compliment. But I have to say that the chosen metaphor was a little premature. We have not come to blows - in any sense - and I hope we are not going to! The problem, nevertheless, remains a problem and we are keeping it under close review.

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