

London Shipping Law Centre

**THE THIRD CADWALLADER
MEMORIAL LECTURE**

Held at Lloyd's of London
14 September 2000

**The European Commission
and the Shipping Industry**

Given by Georgette Lalis, Director of Maritime
Transport for the European Commission, Brussels

Introduced by Dr Aleka Mandaraka-Sheppard
Founder Director
London Shipping Law Centre

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This is a transcript of the proceedings

Introduction by
Dr Aleka Mandaraka-Sheppard

Founding Director of the London Shipping Law Centre

My lords, ladies and gentlemen,

What a great pleasure it is to see so many familiar faces, and such an important gathering again this year, in tribute to the memory of Professor Cadwallader. I believe that this momentum is maintained because of our speakers, and also because Cad (as he was known) was able to attract a significant crowd: of students, legal practitioners, judges, academics, moneymakers, and policymakers. There are representatives of all these groups in the audience tonight.

One of Cad's students myself in 1976, I know that maritime law and policy was his consuming interest. So, he would have enjoyed these annual lectures, and a drink or two afterwards! He would also have applauded the strides made by the London Shipping Law Centre since 1997.

I am personally grateful for the help the LSLC has been given by our President, Lord Mustill, and Vice-President, Lord Justice Clarke, both of whom apologise for not being able to be here tonight; by the Dean of the Law Faculty of UCL Professor Jeffrey Jowell QC, the members of our Steering Committee, my Co-Director, Julian How, and our administrator, Gerard Mathews, who has done all the preparations for this event.

All, in their own ways, have contributed to the progress of the Centre, because they believe in its purpose and have confidence in its work.

Of course, some of you, who are new to the Centre, would like to know its purpose, which is the promotion of the interests of the shipping industry, in which each one of you plays an important role. We do this through education in the broadest sense.

The Centre blends the talents of your organisations, from the legal to the commercial and everything else in

between, to create a synergy in order to strengthen the primary position of London as a world maritime centre.

Together, in the sessions held by the Centre, we have solved problems through discussion, by combining the expertise, that is so abundant in the City of London, in the practice of maritime law and maritime commerce. I am also pleased to say, that members of the Centre have taken up new initiatives, and forged new opportunities through our activities.

Our programmes have covered a variety of topics, and have been of much interest to the industry. This year, we will be focusing on risk management in relation to setting up shipping corporate structures, corporate liabilities and insurance, accountability of classification societies, risk management and maritime fraud, and risk management in dispute resolution.

But let me make a confession: the Centre, and the younger generation in shipping, whose education is vital to the success of this industry, rely on your financial support to make things happen. While we are grateful to our subscribers and supporters, success and growth, as you all know, are linked to capital investment. I would like to refer you to the penultimate page of the booklet, which you may read, thoughtfully, with your business partners.

There is no better place for holding this event today than in the heart of the City, and in particular, where the business of insuring the risks inevitably involved in shipping, is centred.

We are fortunate to have such generosity and support from our host, Lloyds of London, for a second time. Most of you will also recall the lavish hospitality of our previous host, Shell International Shipping and Trading, at the inauguration of this event. We hope that others will follow these examples for our future events.

We are also indebted to our sponsors for tonight's reception: LLP Professional Publishing, Lloyds List Events, Cheeswrights, MRC, and Elka Shipping; and of course to our members and followers. We value their support for making this event possible and enabling the London Shipping Law Centre to continue its mission

Turning to our panel, it is our privilege to have as Chairman of this event Mr Graham Dunlop of P&O Ferries. On behalf of our audience, I thank you for kindly accepting our invitation for this task despite your busy schedule.

Mr Dunlop graduated from Magdalene College, Cambridge, later joining the P&O board. He is Chairman and Managing Director of P&O Ferries Ltd. He also holds the position of chairman in many other companies of the group. He has board responsibilities for group safety and environmental policies.

His services are also in demand outside his company. Last year, he was president of the Chamber of Shipping. He is currently chairman of the standard P&I Club, and the UK representative of the Board of the EC Shipowners Association, as well as of the Council of European and Japanese Shipowners Association.

Some of us may believe that luck does not come twice, but in the case of this event, I can assure you that it has. It took me only two minutes on the telephone on the Island of Andros, to persuade Mr Pandi Embiricos, who is well known to you, to agree to sit on the panel and contribute to the proceedings this evening. We appreciate his spontaneous support.

The Embiricos family, for generations, has been a major benefactor to the Island of Andros, and I am proud to say that I received my secondary education at the Embiriceion High School.

Apart from being the Chairman of Embiricos Shipbrokers Ltd, Mr Embiricos has held the position of chairman in other organisations, such as the UK Freight, Demurrage and Defence Association, and currently he is the President of the Greek Shipping Co-operation Committee.

Bearing in mind Mr Embiricos' eminent position in the world of shipping, and expertise gained in his family business, he will, undoubtedly, add a new dimension to this event.

Regarding tonight's address, let me just say this. The gradual cultivation of a safety culture in shipping, and the related challenges that are ahead for the shipping industry, concern high goals. It may be that a high price has to be paid, but the commitment must remain.

We could not have a better speaker than Mrs Georgette Lalès to enlighten us about new developments at the European Commission in this respect, and policy issues that affect the industry. For this, and for taking the time to visit us in London we are most grateful.

I would like now to hand over to the Chairman, Mr Dunlop, to introduce the speaker and lead these pro-

ceedings. You have a unique opportunity to find answers to your questions at source. Share your ideas and experience with our panel and over drinks. Then you may go home remembering that the London Shipping Law Centre, with your help, is rich in promise.

Chairman's Introduction

Graham Dunlop P&O Ferries

Good evening, ladies and gentlemen. It is a great privilege to introduce Mrs Georgette Lalès this evening. The theme which Mrs Lalès is to address is one which is vital to the shipping industry and one which I believe will be increasingly discussed. Shipping has always been a global business. Other economic areas themselves are increasingly becoming global and it is a trend which I believe is bound to continue.

Since the end of World War II and indeed before it, governments have worked hard to develop a global regulatory system, on the grounds that this is important for the efficient operation of international shipping. This applies in particular to the construction of ships, but also to other matters such as insurance and liability. If rules were not global, ships would not be able to move freely around the world but would be restricted in their freedom by regional rules sometimes imposed for genuine reasons, but reasons which should be met in other ways sometimes simply as obstacles to foreign competition.

EU shipowners in particular are vulnerable to such developments, since they are major suppliers of services both to the EU's manufacturing industries but also to the industries of the third countries by way of cross trading.

Of course there have been departures from this principle, the classic case is OPA 90. But there are other cases where US policy and practice has given greater weight to domestic considerations than international ones.

This, in a sense is perfectly natural. The huge economy of the United States is relatively much less dependant on foreign trade than smaller economies such as those of Member States of the EU. As the EU develops both economically and politically, it will match in size and importance the United States itself. The major objectives of the EU have so far been to build up its internal market and develop institutions and a Civil Service designed for that purpose. It is perfectly natural for the Commission and the other Community institutions to think in terms of internal domestic solutions to problems which affect its citizens.

Indeed there is, and always has been, difficulty in maintaining a global regulatory system, the benefits of

which are essentially long term when the problems which Ministers and Commissioners face are much shorter term and can in the short term most easily be met by domestic measures. I am sure, for example, that, in dealing with the post “*Erika*” situation, the Commission has been faced with the question: if the United States can go it alone, why can’t we?

It is important to the shipping industry that such pressure should be resisted, but the debate on how far regional measures can go without undermining the international system, will I am sure continue in the EU for some time to come, and it is therefore particularly

apposite that Mrs Lalis should have chosen this for her theme this evening.

As a barrister, Georgette Lalis is perfectly qualified to give this lecture. She has had and continues to have a distinguished career at the Commission. She has in the past dealt with many key issues: social affairs, competition, internal market, administration and budgets. In 1998 she became Director of Maritime Transport, the senior Commission official dealing directly with maritime matters.

It is therefore with particular pleasure that I now ask Mrs Lalis to give her lecture.

The European Commission and the Shipping Industry

GEORGETTE LALIS

Director of Maritime Transport for the European Commission, Brussels

I have been invited today to speak about the relations between the European Commission and the Shipping Industry. With such a big audience many different sectors of maritime industry must be represented here and, I think it might be useful for me to explain what the Commission is.

The role of the Commission is largely determined by the extent to which the 15 EU Governments have agreed to transfer their competencies to the European Union. In the field of maritime transport, the European Community has the competence to make legislation and create a legal order that pre-empts national laws. For maritime transport, the Treaties provide the possibility "to lay down appropriate provisions". This is indeed a very wide formula on which we have based many diverse items such as maritime safety Directives, regulations liberalising cabotage, and so on.

It is important to note that until 1992, it was not clear whether safety in transport was an issue of Community competence. This question was finally clarified by the Maastricht Treaty and it is a fact that the European Union has made its presence felt more and more in safety related issues since 1992; at least this is definitively true for shipping. The major achievements in EU maritime safety law, such as the Directives on port state control on classification societies, the package of texts on safety of passenger vessels, on transport of dangerous goods, and on port waste reception facilities, have all been adopted in the last seven years.

Let me now briefly explain the role of the Commission in the process of producing legislation. As you may know, the Commission, by its nature, is a rather curious hybrid of a legislature, an executive and a law-enforcer, without any real similarities either to international organisations or to national ones.

The Commission itself is composed of 20 politicians, the Commissioners and of their services, Loyola de Palacio being the Commissioner for transport. The Commission is entrusted with the task of preserving the

common interest of the 15 Member States in relation to the missions assigned to the Union. One particular aspect which is crucial for understanding the importance of the Commission is the *right of initiative*. The Commission is the only EU body with a full and unconditioned right of proposing legislation. This means that if the Commission does not act, very little is going to happen in that area at EU level. This is why the Commission takes very seriously requests for action from either the Council of Ministers or the European Parliament.

Law-making in the European Union is a complex affair involving all three major institutions. Apart from the Commission, there is also the Council of Ministers and the European Parliament. To what extent the different institutions are involved again depends on the substance of the matter, but the tendency over the years has been to increase the Parliament's influence in the law-making process.

Since the entry into force of the Amsterdam Treaty in 1999, all legislation relating to maritime transport will be dealt with under the so-called "co-decision procedure" giving equal roles to the Council of Ministers and the Parliament. This will inevitably lead sometimes to slightly longer time spans for the adoption of instruments, but on the other hand, it clearly increases the democratic legitimacy of Community legislation.

Once the Commission has made a proposal, it is up to the other two institutions to adopt it. It is normal, at least in the maritime field, that when the Commission has made a proposal, it will eventually end up as a legal binding act after a period of one and a half to two years. It does *not* mean, however, that all elements of the Commission's proposal are always accepted by the other two institutions. They normally tend to modify the text. Once the law is adopted at EU level, it is then implemented by each Member State under the control of the Commission and ultimately of the European Court of Justice.

Now that I have outlined the role of the Commission, let me go on to elaborate on what the Commission is doing with these responsibilities in shipping. I think that from the perspective of relations with the industry, one can divide our activities into three main categories: external relations, the internal market and, finally, safety and environment.

External relations

As regards external relations our aim is to ensure for our industry open access and free and fair competition on international markets. We intervene immediately, through diplomatic channels or through our personal contacts with foreign administrations, wherever and whenever restrictions are introduced or planned. Since 1986 the EU has fully opened its waters to all flags for all services, with the exception of cabotage, which I will return to in a while.

Our main liberalisation instrument was accompanied by the possibility of taking corrective measures in the event of unfair pricing by third countries. We are also entitled to introduce safeguard measures in response to actions by third countries to restrict access to their market. With hindsight, it is clear that these texts have been instrumental in avoiding bilateral trade disputes.

This liberal approach does not, of course, mean that measures were not necessary to support the EU fleet and prevent it from flagging out towards those open registries that offer better tax and social conditions. This concern was addressed through the Commission's *Guidelines for State Aid* in maritime transport. The Guidelines provide the framework for Member States to offer tax incentives (tonnage taxes), relief from social charges and training facilities to EU shipowners. The Guidelines have been widely used throughout the Union to the benefit of national registries and the employment of EU seafarers.

The main question now facing our shipping policy with regard to international relations is how to persuade all our trading partners to be as liberal as we are. How to achieve a solid agreement within the WTO.

Clearly, a broad agreement between a sufficiently large number of WTO members on bringing international maritime transport within effective WTO disciplines is highly desirable. The EU has shown the way to others by its example, and will continue to push for widespread agreement. Until we reach that point, the EU maintains its policy of seeking further liberalisation of shipping services through bilateral agreements with third countries. Currently, the Commission services are following up on the mandate given by the EU Council of

Ministers to negotiate and conclude bilateral maritime agreements with China and India.

In conclusion, one could say that external relations are the sector where the Commission and the shipping industry live in symbiosis. We have the same objectives and our combined efforts have proven to be successful. This is not always the case for the other two sectors, the internal market and maritime safety.

The internal market

The internal market is defined by the Treaty as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty". The main principles governing this area are the four freedoms, as we call them: the right of establishment, the freedom to provide services, the free movement of goods and people and the free movement of capital.

Some issues we are dealing with in the maritime Directorate fall within this topic. They concern, for example, competition or social issues like the future of EU seafarers. I do not want to expand on them, but rather to focus on two main dossiers: the cabotage regulation and the manning proposal.

The real implementation of the internal market concept took place with the adoption of the cabotage regulation in 1992. This text entered into force almost completely in January 1999. I say 'almost completely' because the Greek island cabotage is still closed to other EU flags until the 1 January 2004.

The cabotage regulation seems to operate smoothly in all sectors, except where public service obligations may be required, that is, in island cabotage. In this respect, Member States have had to adapt from a situation where their markets were completely closed in favour of a national, often state-owned, operator to a situation of open competition. Similarly, the Commission has been confronted with difficult cases. Cases where the right balance had to be struck between the need to allow possibilities for new entrants on the lines and, on the other hand, taking into account the interests and needs of the islands' inhabitants to be adequately connected with the mainland. Our approach has been to ensure open competition on lines that are economically viable and to ensure a fair treatment of operators in case of subsidised lines. In these latter cases, we have also insisted that public service contracts should be awarded on the basis of open and fair public tenders.

The other important text in the internal market area is the so-called manning proposal. This case represented the first big clash with the industry. The proposal

concerns only regular passenger ferry services between Member States. It does not concern cargoes or ocean-going vessels. It aims at ensuring equal employment conditions between EU and non-EU seafarers. The proposal has created huge unrest, not only among those involved in this particular business but, I would say, the shipowning community as a whole.

The reason for this is that the proposal, according to the industry, violated two key principles: first, the principle that the flag State's law governs social matters, and second that salaries are an issue for social partners to deal with alone. The Commission's perspective was quite different. If an airline service from Gothenburg to London falls under the internal market rules why on earth is it different for a ship operating between the same ports?

For us, it is only normal that what applies to the rest of the industry, the transport industry included, within the internal market should also apply to the maritime sector. Incidentally, there is no other industry in Europe that can import workers from a third country to work on the EU territory and pay them under the conditions of that third country and, by the way, a foreign company operating in Europe falls under these same principles. Even with that, the manning proposal is not about prohibiting the practice of employing third-country seafarers. It is rather about adjusting this practice, as far as is possible, to the rules of the internal market. This text, as our Chairman knows, has given rise to long and painful discussions on which I do not want to elaborate. I only want to highlight the concept of the internal market, which is particular to the EU and which has been applied also to the Directive on the licensing of ro-ro ferries.

I do not want to finish this chapter without saying a word on our planned Directive on access to services within ports. Big European ports, as you know, are economic giants that for a long time have stayed outside the remit of the principles of the internal market. Apart from a few competition cases, nothing really drastic has happened to open up the provision of port services to competition. Our proposal aims at ensuring fair, open and nondiscriminatory procedures in the award of contracts and concessions in ports. We know already that we will encounter difficulties, especially with UK ports but not with them alone.

Let me now turn to the most contentious, at least for the time being, of all three sectors: that is, maritime safety and the protection of the marine environment. Perhaps, as a starting point, the maritime safety field is one of the most difficult areas for the Commission, and

indeed the Community, to be recognised in. This, is due, I must admit, not only because of industry but also because our Member States were keen to exercise their competencies alone. This may appear strange, given that the benefits of Community-wide action in safety, as opposed to national action to ensure safety, are generally recognised in all other sectors.

But in shipping things are different. It is a different world, as you know. There are many different reasons for a certain reluctance to accept the Commission as a player in maritime safety regulation. Some of them are quite understandable and perhaps even reasonable, others are more difficult to comprehend.

First of all, in a historical perspective, the involvement of governments in the regulation of shipping is a relatively recent thing. It was not until 1982 that the International Maritime Consultative Organisation became the International Maritime Organisation. Until the early 1970s at least, the shipping industry was used to a relatively independent role as regards development and application of international standards. Since then the role of governments has become evermore present but the tradition of refusing public authority intervention is still strong, in particular when comparing the shipping industry with aviation.

The first difficulty for the Commission is thus that we represent a public institution headed by politicians.

The second, much greater, difficulty is that we are considered to represent a – dare I say it? – a *regional* institution. The obsession of the maritime world with the distinction between global and regional initiatives is extraordinary. Of course shipping is a global business. And of course there are many types of issues, which are best regulated at a worldwide level. But the intensity of the “regional-is-bad” reaction is sometimes stunning.

You can sometimes also hear the argument that the Commission is “flexing its muscles” to compete with the IMO and that we invent and propose rules mainly for the sake of occupying the field! This is plainly wrong. The Commission has consistently recognised that, the IMO has a leading role in fixing safety standards worldwide. This is the reason why, for example, we always refrained from fixing our own standards even though we can find the technical expertise to do it and indeed we do it in other sectors. We have not, for example, through our proposals created a new type of tanker that is safer and better than anything the IMO recognises. We have never interfered with the SOLAS standards nor indeed the ISM Code. What we have done is to try to achieve a uniform, and sometimes accelerated, implementation of the global rules in Europe.

Personally, I have a great deal of understanding for the arguments in favour of global regulation and I do not wish to diminish the importance of that discussion. But I cannot help thinking that those who undermine the international institutions in this respect are those who use the argument for regulation at a global level when it is evident that all they really mean is "let's not do anything at all". There are those who want to confine these institutions to reacting to accidents and never to be at the forefront of real prevention. The big danger, as I see it, is the growing perception in Europe that the international community is incapable of acting, incapable of meeting the challenges facing it.

That would not only be very unfortunate and in most cases completely unjust; it would also threaten the very uniform safety regime, which the world has managed to create over the years. There is quite a huge set of rules and standards for which compliance by all ships can be expected and even required. That is already quite an achievement. The biggest challenge for the maritime community now is to enforce those rules and update them in time to catch up with new technologies.

Turning again to Europe, I shall not expand on what we have achieved till now, since the focus today is the legislation in the aftermath of the "Erika" accident. And I will not repeat the damage that this accident and the oil spill that followed have created for people in France and to the industry itself. Instead I shall try to focus on positive things.

One positive thing is that the industry has *genuinely reacted* and indeed firmly condemned many aspects of the causes of the accident and how it was handled. There have been a number of innovative measures from a variety of players involved. There seems to be a readiness to move ahead and to start looking for the best possible compromises, instead of the instinctive head-on clashes, which we have seen before the summer.

Another positive thing, at least from my perspective, is the present state of affairs with the so-called *first "Erika" package*. I believe most of you are familiar enough with our proposals of March 2000 on classification societies and port State control in the Community. Both these proposals are now proceeding relatively quickly for a decision in the Council and the European Parliament. But even when it comes to the accelerated phasing-in of double hulls, there is good news. Finally it appears that the industry, as well as the 15 Member States, are nearing a compromise on how to narrow the gap between MARPOL 13G and existing regional instruments. This change of attitude is very

welcome indeed and we look forward to the forthcoming discussions in IMO with hope.

Whether the same type of development can be expected for the second set of measures remains to be seen. As you may know, it was also announced in the March Communication that the Commission will prepare more measures for the end of this year. The forthcoming proposals are still being discussed within the Commission. Their exact content is still uncertain, but I can briefly outline their main features.

First of all we are preparing a directive on navigation issues and reporting systems within European waters. We will amend and simplify the existing directive on transport of dangerous cargoes and will profit from the introduction of transponders to improve safety of navigation. This will cover both passing traffic and port-bound ships.

Second, we will propose the creation of a European Maritime Safety Agency. Incidentally, we are proposing more or less the same thing for aviation. The Agencies are bodies created under EU law to assist the Commission and Member States in the implementation and improvement of EU legislation. This Agency will create neither technical standards, nor law, nor will it lead to additional controls of ships. It will mainly help us, the Commission, to monitor classification societies, harmonise practices and training in port State control throughout Europe, and adapt EU law to IMO resolutions, where appropriate.

The third measure will concern liability of the players involved in the carriage of oil at sea. This is one of the things that really have been on the European agenda since the "Erika" accident. The reasons are rather obvious.

We don't know yet exactly how expensive the "Erika" will be. It seems clear however, that even the most elementary compensation of damage to victims will be possible, largely thanks to the "goodwill" of the government and oil company involved. I think you would agree with me that this is not how an adequate compensation system should work.

Following the "Erika" accident, the Commission examined the existing international system, provided by the CLC and Fund Conventions. As stated in the Communication, our assessment is that the international regime has a number of assets, but nevertheless is unsatisfactory in some important respects. Some of them are:

- (a) the total level of cover is insufficient (€ 200 million): some recent accidents involving comparatively small amounts of oil have already raised doubts as to

the sufficiency of this limit. The release of oil could easily have been double in "Erika" and much, much more had it been a bigger ship;

(b) the liability of the shipowner is set at a too low level (only € 12 million in the case of the "Erika"): This indicates that there is rather a remarkable imbalance between the responsibilities involved and the exposure to liability;

(c) there is hardly any incentive for shipowners and charterers to use quality ships.

Now there are serious calls in Europe, in many different circles, to do something about this type of problem. We cannot answer these calls simply by telling people that we cannot do anything because this is what is internationally agreed. I think we need to recognise that the CLC and Fund regime may no longer reflect the interests of society today. It is a long time since these instruments were adopted and almost 20 years since the latest amendments were elaborated. What is particularly questionable is the almost inviolable right of the players involved to limit their liability.

Needless to say, the Commission is eager to rectify these deficiencies. The question remains how. On the one hand, the Commission certainly believes that the adequate and prompt compensation of victims of an oil spill in Europe is a very important issue indeed. On the other hand, it also believes that some serious effort should be put into changing and updating the existing international regime *before* taking the decision as to a potential separate liability regime at European level.

At the moment we are discussing this issue with a number of players involved, including, of course the shipping industry, and, as I said, we hope to have some proposals ready before the end of the year.

In *concluding* this presentation, let me say something that all of you already know: that the maritime industry is of paramount importance for the European Union, representing the world's largest trade block. Its significance and contribution to the wealth of our societies is clear. This being said, there is an issue for the

industry that is of growing importance. It has to do with image. This industry must be perceived as being a responsible, quality-minded industry. The "Erika", disaster in this respect has dramatically changed the picture for very many of us.

A considerable degree of public confidence in the industry has been lost, following this accident. This confidence has to be rebuilt, the sooner the better. There are basically two parties only that can restore this confidence, that is, regulators and the industry.

As I have already said, the shipping industry has already shown many important signs of realising this and it is genuinely acting accordingly.

But at least as importantly, over a longer perspective, I think there has been a gradual change as to how the Commission and the industry communicate with each other. As far as the industry is concerned, I think that it is gradually being recognised that the Commission is a player in maritime transport: that it is not there just to irritate the established and traditional maritime world by upsetting international rules. The industry is beginning to acknowledge that the Commission proposals originate in legitimate concerns from a wide number of people, even within the industry itself, and that the Commission proposals are not by definition stupid or useless. The industry acknowledges also that changes are inevitable in a changing world. It may be that our role is to trigger them.

I might be overoptimistic, but I want to believe that the foundation for good communication and mutual respect between the Commission and the international maritime industry has been laid. It has taken many years and it has not always been easy. We may not be cheerful friends yet, and perhaps we should never become so, but at least we accept and respect each other and more and more aim for dialogue instead of confrontation. I find it very valuable indeed and I certainly hope that this relationship will continue to mature and to bear fruit for the sake of Europe and for the sake of the shipping industry at large.

Comment

Chairman

Thank you very much for an extremely thought-provoking and stimulating lecture, I'm not sure that I agree with you on the Manning Directive, in fact let's be blunt, I don't agree with you at all, but as far as this evening is concerned we're on the same side of the table so we'll drop that. I did say to Mrs Lalis earlier that it wouldn't be her if she wasn't controversial and she certainly hasn't disappointed us. Mr Embiricos, would you like to make some comments?

Mr Epaminondas Embiricos (President, The Greek Shipping Co-operation Committee)

I'm sure that we're all very grateful to Mrs Lalis for her very interesting and very revealing comments. It's always good to see her and to hear what she has to say and it enables the debate to take place which I think is what is really very important. I must say, however, that one area that came out of Mrs Lalis' comments that is also fairly evident from proposals that have been emanating from the Commission does give rise to considerable concern. I say that as a European. It is clear to me that the Commission views itself as a, shall we say, port State instrument, not at all as a flag State instrument. The Commission when talking about some of its proposals in relation to the "Erika" says it wants to emulate the United States, it wants to emulate OPA. Of course the Americans have no ships at all to speak of. Europe has a very large fleet, not only the ships under European flags that Mrs Lalis referred to but also ships under foreign flags belonging to European interests; they are just as important to the European economy. They are just as important to the European shipping industry.

Why do I say I am so concerned? I think that European shipping today is in danger from competition from very competitive shipping in the Far East. It needs the support of the Member States, the support of the Commission and of the European Union if it is to succeed in competing.

The Commission a few years ago was very supportive of shipping; this now appears to be changing. I think it's unfortunate, I think it's dangerous and I hope the Commission will rethink this matter, because today we have the centre of gravity of world shipping in Europe and unless we're careful that centre of gravity is going to go out to the Far East and it would be indeed a shame if that was in part due to the Commission viewing itself as a port State rather than as an entity which is both a port and, importantly, a flag State.

Now turning to some of the specifics and to some areas which I think pose other great dangers to European and in fact to world shipping, I think we have to look at the two proposals which Mrs Lalis herself admits are controversial and which she says fall in the safety sphere, and those are the phasing-out of single hull tankers and the liability issue.

Mrs Lalis said that she felt that we were near a compromise on the phase-out. I hope she's right. I personally don't view it so much as a compromise, I think there is getting to be a greater and greater awareness of the impossibility of implementing what the Commission has proposed and that is, I think, causing people, organisations, and governments to coalesce. So let us hope the outcome is favourable.

Perhaps in very few words I should tell you what the phase-out proposal is, in case anybody doesn't know. There are basically two parts to it. One is for pre-Marpol tankers built before 1982 – they must be phased out between 2003 and 2005 at age 23. Now in fact what one should know is that most of these tankers were built before 1977. So in fact really what the Commission is proposing is phasing out nearly the entire pre-Marpol fleet in 2003. And the other proposal is to phase out the Marpol ships, those built between 1982 and 1996 in 2010.

There is no doubt that it is the fervent desire of all of us to eliminate sub-standard vessels. They are dangerous for the environment, they are dangerous for their crews, they have no place. However the phase-out proposals of the Commission do not in any way help in the elimination of sub-standard vessels. Mrs Lalis told us that the phase-out proposals came under the area of safety. That's interesting; a Commission official was quoted only the other day in Lloyds list saying the Commission's single hull phase-out proposals are irrelevant to the "Erika" case. Last year after the Singapore conference a commission official was quoted as saying that their phase-out proposals did not relate to safety but rather to political considerations, so maybe there should be a fourth category added to those Mrs Lalis listed and that's politics; and there I think one has to be careful because we can't endanger the world fleet because of politics, particularly because of very localised politics.

Now, let me just tell you a few words about single hull vessels. The "Erika" was a single hull vessel; she was not a pre-Marpol vessel, she had been converted to a Marpol vessel. The "Erika" failed, the "Erika" sunk because of structural failure due to corrosion. Had she been a double hull vessel, matters would have been no better;

in fact they might have been worse: double hulls are more susceptible to corrosion because they have larger ballast spaces. So there is no doubt that the well built, well surveyed, single hull tanker does not pose any threat to the marine environment.

The Commission's proposals also talk about age. But age is not a significant criterion either. The international community has dealt with this at the IMO. We have the enhanced survey programme and the enhanced survey programme varies according to age, so the older the ship the more she should be inspected, and the more has to be done to her. Age is compensated for. There is no doubt that double hulls do offer certain advantages and I think we are all in agreement on that. The advantages, however, are mainly in the case of low energy grounding and low energy collisions. So these advantages are advantages that the international community wants to avail itself of but they're not vast advantages, they're fairly modest advantages. And this is why the international community at the IMO agreed a gradual and considered phasing-in of double hull tankers. However this was done over a period such as not to significantly affect the existing fleet of single hull tankers. This international agreement by the way was reached after OPA had been legislated in the States, so it was reached in full knowledge of what had happened in OPA. OPA didn't come as a surprise afterwards, but nevertheless the international community, including Europe, at the IMO agreed on a gradual phase-out of double hull tankers which now the Commission wants to radically change.

The Commission do say that the reason they want change is because of OPA; they want to emulate OPA. They're not doing so, however, because OPA gave very long notice, well in excess of ten years of its phase-out provisions. The Commission notice time would be a little over two years. That's why it's so difficult, in fact I think I shall be able to explain to you in a moment it's impossible, to implement.

Furthermore, even though the Commission wants to phase out, for example, nearly all pre-Marpol tankers in 2003, I must tell you that under OPA which the Commission seeks to emulate, pre-Marpol tankers can continue trading to the United States, to Loop and to Lightening offshore until 2015. So there's not much emulation there.

But perhaps the most important point is what I mentioned before. When the United States introduced OPA which has both phase-out provisions and liability provisions, they did so entirely as a port State; they could not care less about the ships and the shipowners, they didn't have any, they were all European and foreign. Well now

this is not the same in Europe: Europe has an important shipping industry which it must seek to preserve.

There is no doubt and I can quite understand that after the very serious damage caused by the sinking of the "Erika" in France and the justifiable reaction of public opinion in France that the Commission wanted to be seen to be doing something and that is right, something not anything. And the something must be something positive; here I think we have something which is not only not positive from a safety aspect but in fact it can be detrimental.

Just out of interest I should mention that the Commission's proposals according to the figures tabled by the government of France would result in some 2900 pre-Marpol tankers being phased out in 2003. That's a staggering figure. Bear in mind that shipyards today are full up until 2003, no further orders can be placed: there is simply not the capacity for the world transportation industry, for the shipping industry to meet its obligations in transporting the oil that the world needs to consume in 2003 if these 2900 ships are phased out. I mean we currently in the United Kingdom have been having problems with petrol. Mrs Lalis was telling me that they have similar problems in Brussels. If the Commission's proposals are introduced these problems will pale into insignificance compared with what we will have to face, because it won't be for two or three days it will be for a long, long period of time before the fleet can be refurbished.

But it's not only the question that there are not enough ships to transport the oil if we have the Commission's phase-out proposals implemented in 2003; there's also the question of scrapping. Now you can't suddenly scrap 2,900 ships, so what's going to happen to these tankers? They're going to be lying around in the ports of the world, I'm sure some of their owners are going to abandon them. Unable to trade, unable to be scrapped, the ships will deteriorate, they will leak, they will be an environmental disaster waiting to happen. So really when I said before that the proposals of the Commission cannot be implemented, this is what I was referring to. They cannot be implemented because it would create a serious shortage of tonnage; they cannot be implemented because the ships that are being decommissioned cannot be scrapped.

These are not my views, this has been said by the Japanese Government in a paper submitted to the IMO; it has been said by BIMCO in a paper submitted to the IMO; in fact the figures themselves are largely corroborated by studies that the IMO has commissioned themselves, so you know it's not my view. It is the coalescing which hopefully is taking place now to try and

make some sense of what has been put forward by the Commission which unfortunately is not workable. And it doesn't apply only to 2003; it also applies, according to the Japanese, to 2010 who say that when all the Marpol ships go, there is again going to be a shortage.

Now the proposals of the Commission would not only of course create problems as far as the world economy is concerned. If we come down to looking at the shipping industry it would create serious economic hardship for it and that has the risk of discouraging future investment, so we could have bottlenecks in 2003 and 2010. That is not the will of the shipowners who see that what has been internationally agreed, agreed by Europe as well, is now being undone and who may think twice before reinvesting vast amounts of money in tonnage. So we have to bear that seriously in mind.

As I said before, I would repeat that there is no question that we all want elimination of sub-standard tonnage, as does the Commission and therefore I think there we are *ad idem* and the "Erika" provides a lesson. The "Erika" indicates to us perhaps a way that we should proceed down to eliminate sub-standard tonnage. What worries me, though, is that I don't think that the totality of the Commission's proposals lead to the elimination of sub-standard tonnage.

What creates a sub-standard vessel? It's an owner who wants to cut corners and a classification society who does not properly survey the vessel, so really and realistically we're never going to be able to prevent anybody who owns a ship from trying to cut corners but we should be able to catch them with a proper survey by class societies. The problem is not one of insufficient regulation. The regulations are there, the enhanced survey system is there, what we have to ensure is that the regulations are properly implemented, we don't need new regulations. Now we have had discussions with the Commission on this subject and we have pointed out that one of the problems is that some of the minor, smaller class societies (which of course shall remain nameless), perhaps to ensure that they have a sufficiently large customer base, tend to be more flexible, maybe a bit too flexible. Now the way you deal with that in my personal view is by limiting the number of class societies that are recognised, for example, in Europe to the major societies, and we have suggested this to the Commission, but the Commission tells us that politically is too difficult to do. Well maybe it's better to do something which is difficult politically but will succeed, rather than to do something that is politically easier but not only will not succeed but may be harmful so I just put that forward for some thought.

The IMO, we must talk about the IMO. The reason why the international shipping industry works well and why world trade is carried safely and cheaply by ships is largely because of the international regime. The international regime exists largely because of the IMO. Shipping is an international business; if you have a whole lot of regions going unilateral, the whole industry is going to seize up, ships will only be able to trade in this area and that area and another area; we need internationalism and we need the IMO and we need the EU to respect the IMO. It is no good for the EU or some people in the EU to say to the IMO, "Well, look, we are going to do this, why don't you do it first if you want, but if you don't we'll go ahead and do it anyway". That does not create the support that the IMO really does need so that we can try and have the most efficient, the safest, the best international shipping system and I really would urge the Commission to give the IMO the respect not only that it deserves but that is required so that we can maintain the efficient shipping industry that does exist today.

Liability. Once again I'm saddened to see the Commission are thinking in terms of unilateralism. We risk endangering the whole system. The current liability system has evolved over centuries, not over decades, over centuries. It has evolved to enable world trade to grow; the growth rates of the economies today are largely due to the growth of world trade, to internationalism. If Europe starts going unilateral on liability it could undermine the whole system, and the repercussions could be very, very serious. Looking at some of the points that Mrs Lalis mentioned that concerned her. She says shipowners' liability is too low. I'm not sure I understood that; the shipowners' liability depends on the size of the ship, that is the system that was agreed. The "Erika" was a relatively low ship, and the shipowners liability in the case of the "Erika" is therefore correspondingly low. In a large ship the shipowner's liability is much higher. So I don't think Mrs Lalis is correct in saying that the shipowner's liability is low. If she wants to question anything she can question the scale which goes according to size, but again these are things that have been worked out over a long period of time and have been worked out with common agreement of all parties, including shipowners and cargo interest.

The question of the total amount that is available, the limits of liabilities. Well I'm sure Mrs Lalis knows better than I do that these limits are currently being increased very substantially and they're being increased not by fiat, not randomly, they're being increased in accordance with the mechanisms that exist in the international

Conventions. There we have success for you; Conventions are reacting the way they were designed to, the limits are going up because there's a suspicion they're not high enough. We don't want to tinker with that, that's working well, let's leave it alone. No incentive for quality ships from the liability regime: now I think that's a misunderstanding, the liability regime is there to compensate the parties that have suffered damage, the liability regime is not a policeman, it is not there to punish, if we start tinkering with the whole rationale and philosophy of this system and trying to bring in extraneous things like punishment we are going to ruin the systems. No, no this system has been developed over centuries and it is a logical system, it is a system which works and works well and please let us preserve it.

Mrs Lalis says that the Commission doesn't like the fact that a shipowner is able to limit his liability, well now that is not something that happened by accident. That is to enable shipowners to perform the function of being shipowners and to enable world trade to occur. What is crucial to the liability regime is to be able to actually pay the people who suffer damage and also to ensure that the shipowners who are unlikely enough to have a serious casualty are able to continue in business. Now this means that there has to be insurability. That is the key word. The liability regime has to be insurable, what we have to be careful of is that in some fit of enthusiasm the Commission doesn't seek either to say that there is no limitation at all or to say the limits are so high that they can't be insured, then what we've done is we've destroyed the international liability regime which has served us well which has enabled the world trade to grow and which ensures that those suffer damage are compensated and they have been compensated. So in conclusion what I want to say is these are very serious matters, we're not just talking about how can we politically deal with some understandable and justifiable disquiet in France. We're talking about how the world trades and the world trades, 95 per cent of world trade is carried by ship. If we introduce measures which undermine this system what we're doing is we're doing a disservice not only to Europe, not only to the shipping industry but to the world as a whole. Thank you.

Question and Answer Session

Alec Coutroubis, University of Greenwich

I would like to agree with Mr Embiricos and perhaps explain something in the sense that the European Commission appears not to be functioning as a flag State but indeed as a port State which brings me to the ques-

tion: What happened to the European flag? What happened to the efforts of the European Commission to create a European flag and why has it disappeared? And was that perhaps the reason why it has now become a port State?

Mrs Lalis

Well I think there is a misunderstanding, we are neither flag State nor port State. I tried to explain that our role is to deal with all aspects of a given problem; it's not because I'm Director of the Maritime Transport Directorate that I should behave as a flag State in favour of the maritime industry because otherwise if I don't take a holistic view of all the problems maritime transport poses, my colleagues in the Environment Department will then decide about you. So if the Commissioner for Transport and Energy wants to be politically convincing, and this is very important to every Commissioner, it's very important that you understand how the system works in Brussels. She has to be seen as taking a position that is not in favour of nuclear energy only, of maritime transport, of aviation as against consumers etc, she has to take a balanced view of all the issues: protection of consumers, protection of passengers, protection of her own environment, protection of the industry. So it's not flag or port; it's wrong.

Alec Coutroubis

So the European flag has disappeared because, I think there were 12 Member States at the time who wanted it to be a flag of convenience, I mean an open registry, let's call it that. They wanted it to be a flag that would allow third-country nationals on third-country salaries on board European ships and this was not acceptable at all levels. And if you don't do this you don't need a European flag. Why on earth would you have a European flag? Most of the European Member States have more than one register; some of them have two or three. So I mean we didn't think it was important for ships to have the blue and the stars; it was only interesting if it had value to add, which it didn't have.

Mrs Lalis

So this is why we have withdrawn. We don't want to be a state, we're not a state; we are an international organisation, original according to you. We are an international organisation, so we don't have a state's prerogatives and this flag didn't have an added value. Ministers did not agree to have tonnage tax at European level, not all of them wanted Filipinos on board the European

flags and where do you go then with that? This is why it become void; I mean the proposal was withdrawn.

**Anthony Diamond QC Essex Court Chambers
(retired judge) Member of the Steering
Committee of the London Shipping Law Centre**

My name is Anthony Diamond, I'm a maritime lawyer and I've had a lot to do with and taken a great interest in international private law conventions in the maritime field over many years. I was therefore very interested in that part of Mrs Lalís' address which referred to liability. The particular liability she was referring to was liability for oil pollution but there of course many other liabilities that arise out of the operation of ships. Now my whole instinct in this sphere, and I speak neither from the shipowners' point of view nor from the consumers' point of view, but my whole instinct is to seek a solution which provides predictability and uniformity, wherever an incident may occur over the course of a ship's trading life, and no matter whether the loss or damage is suffered in one part of the world or another. This has been the objective of maritime lawyers over the last 100 years in negotiating international private law Conventions, whether in the field of carriage of goods or oil pollution or any other field. Now I was a little saddened listening to Mrs Lalís, not to hear her attach equal importance to this objective. She seemed to be taking the view that what was really important was to protect the consumer, or the third party suffering loss or damage, and ensuring an adequate level of compensation. She seemed to be leaving out of account the factors I have referred to earlier. Is this of no importance to the European Commission? I will be very saddened to see the ambitions for a uniform legal regime in the field of shipping replaced by regional solutions, whether the regional solutions are adopted by the United States or the EC makes no matter. Oughtn't we to be striving towards a global uniform system and trying to harmonise the laws of different countries in this sphere rather than seeing that system disintegrate?

Mrs Lalís

Maybe I was not clear enough in my speech. I think I said the European Commission recognises that it's best if we don't think that the existing system is satisfactory. An example that Mr Embiricos raised is the level of liability of shipowners. The "Erika" accident will cost something like \$400 to \$500million and the shipowner's liability is \$12 million. Now we don't think liability is like tonnage tax, liability has to be related to the damage caused whether you have a Mercedes or

whether you have a Volkswagen, the old ones. You might pay different premiums according to the car you have but the final victim will be compensated whether a Mercedes created the accident or a bicycle. So I don't think we should extend a lot. I know it's very contentious, but to tell me that the levels are satisfactory, I don't think that in relation to the damage that this little ship has cost, the liability and the compensation is appropriate.

Now, the question is should Europe go alone on the road of creating an OPA 90 liability system. And the present thinking and the present state of mind of my bosses is that we would rather try and change and make the levels increased within the international existing Conventions rather than starting something ourselves. I do not know what will happen if this doesn't work. I don't know because a lot of people think that whatever is the liability and the compensation of a victim in Asia or Africa, if you are European you deserve what you deserve, you see. Members of Parliament don't understand that because the Japanese will only get I don't know how much, a European should get the same, if Europe has the legal powers, legally speaking, the competence to go for a separate resolution. So I think for the time being we want to see the international regime changed. If it doesn't work we'll be here in a year or two and we'll discuss what will happen.

Bruce Farthing, Chairman of Maritime London

I have been in the shipping business for 40 years plus. Despite Mrs Lalís' charm I was shocked when she said that she was amazed by the obsession of the maritime world with internationalism. This is what I call, and have called for many years, the blue funnel, red funnel syndrome: that if you go to this country you have to have a blue funnel, you go to the next country you have to have a red funnel and so on. In other words you have a complete breakdown of the international regime. So my question to her is how does she think that world trade can be served, which is the whole business of shipping if there is regionalism? My second question, if I may, is to ask what is her understanding of the reasons for the "Erika" incident? We have had no official pronouncement; there have been many things said in many places about the inability of the French administration to provide a safe refuge and this and that. I do not know, does she know what the answers are and if no-one knows what the answers are as to why the "Erika" went down, why are all these rules and regulations being posed. My third point is about the question of image, the "Erika" is one of a long series of regretful incidents going back in my time to the "Torrey

Canyon", to the "Amoco Cadiz" to the "Herald of Free Enterprise" and to others. This is something that the maritime industry has for years sought to fight against. We are imbued with the idea that we wish to have quality and I think Mrs Lalis said that there was no drive towards quality. I find this amazing; the whole of the shipping industry for 40 years in my experience has been trying to drive towards quality so how are we going to get back this question of a better image? Maritime London is trying to do just that in this country and I hope that in Europe and elsewhere we may have efforts to improve the image and to get a better understanding. But without a fully integrated international approach to shipping you will not have world trade being served properly and economically. Thank you.

Mrs Lalis

Now I don't think I said that regionalism is good. In fact I had a whole part of my speech explaining why it is not the solution. I only said that there are issues that might be dealt with at regional level because the regions request it. The populations, the politicians and you have to accept that some of these issues might be better dealt at regional level. Environment is a regional issue. Whatever you might think about clear and clean seas all over the globe it is a regional issue primarily. If it's a global achievement, you will not stop anybody in a region requesting that accidents do not happen, that seas are clean, just because somebody else in the rest of globe doesn't care. So at no moment did I say that regional is good.

Now I didn't say either that we do not respect the IMO. In fact I started feeling we are the only ones that respect the IMO. Let's be clear, we are the ones that take all IMO standards and implement it strictly in our 15 Member States, the United States do, Japan do, Australia, Canada, but how many IMO members do it? We are there to check that what the IMO decides is implemented in Europe. We are the ones to say the IMO decide that double hulls are the best: double hulls are the best, most of you here contest it, we don't contest it, what the specialists and the IMO decided is respected by us, so I will not take the argument that we should respect the IMO. I think others should respect the IMO more.

The reasons for the "Erika". This is the argument the maritime industry uses over and over: unless you exactly know the reasons for the accident you should not do anything. I have seen the Malta report, it's not public yet and when you see it I think you will laugh as I did. If you expect the Malta investigation report to give you the exact accident of the "Erika", why should you have the

exact accident, report of an accident to one and prevent others? Since you know it was corrosion of the hull was it because of the shipowner, was it because an inspector wasn't paid? I don't know why but the accident is there and all the possible causes of this accident are known to you; you are the specialists you know them better than I. So it's hiding behind our finger to say we have to see the report.

Now the Commission never said that the double hull issue was exactly related to the cause of the "Erika". Never. The Commission realised, in fact my Commissioner realised that the "Erika" would not have been authorised to sail to the United States had it stayed. Had it not been wrecked for another two or three months, it could not have gone because of OPA, so this is why the double hull. The double hull is because we don't want to see, will not the US market go to us, we are one of the frustrating blocks. Where will they go? They will come to Europe. France has made a study for the world fleet, we have made a study for what we call the relevant fleet, which is the registered flags and the ships that regularly over the last three to four years I think trade in EU waters, whatever flag. For these are important for oil in our refineries. So we didn't only take the EU register but also those who regularly trade and these are no more than 2,200 altogether, not the first category, altogether.

So this study showed also that there is a peak in scrapping in, in the beginning, by the first date and by the end date: 2003 is not in our proposal, 2005 is our proposal; 2003 is a scenario if the text is adopted and enters into force in 2003. So the Commissioner when she received the European Shipowners Association the day the text was adopted said I'm flexible on the first date, I know we came too late, I know we will create a problem, I am flexible. She hasn't stopped saying that to everybody who wants to make an appointment and come to see her in her office. Okay and you will see that she will be flexible. So I mean we are not stupid; we are a lot of other things, and I didn't say this industry is not a quality industry, I said it has to be perceived and I am afraid it is not perceived. I didn't say it is not, it is a quality, for me it is and I can repeat it and write it and say it, I said it has to be seen as being one, and a single accident can create an image problem. A single one.

Chairman

Thank you very much. Two further brief questions.

Dr Nikos Mikelis, INTERTANKO.

Mrs Lalis, first of all I have to state that I have had the privilege to have read the draft Malta report very

recently. I am a technical person and I have been in the industry for quite some time. I very much disagree with your assessment of the report. The report really goes to the heart of the issues, it searches very deeply and widely, it is not emotive and is not looking for scapegoats. When it comes across something that might have contributed to the accident, it evaluates it. Soon the report will be in the public domain, and the industry will be able to judge the technical quality of the report for itself. In the meantime, the events surrounding the "Erika" have made me feel that logic is being violated and the way that our industry is regulated is inconsistent.

Mrs Lalis

I have overdone it when I said you will laugh at the Malta Report. You are right. The Malta Report is technically sound but it doesn't draw any conclusions on the causes of the accident. It was a bit provocative what I said. I'm not an expert, I'm not a technician. I want to say that it's not the report, investigation report of Malta or of France, because France is doing their own report that will enlighten us on the causes of the "Erika" accident. If you in the business do not know how and why it happened I mean it's a bit of a problem.

Chairman

Thank you. Can we take one more question please.

Hugh Bryant, Shadbolt & Co.

I just wanted to share with you the thought that I think I've got an awful feeling of *déjà vu*. There have been one or two similes and stories about what people sound like and what parables they want to tell you. I think the most apt one is the Emperor's New Clothes. Here are a hundred of us sitting around and we're all telling you one story but the trouble is that the vast majority of people out there (I agree with you Mrs Lalis) don't see it that way; they don't see it the shipping industry's way. It seems to me that we are also a different group here, who are actually technicians of one kind or another; the shipping industry and their technicians coped extremely well with OPA. You now have a comparison; if you actually look at the graph that the US coastguard put out about the incidence of oil pollution in the United States before and after [OPA 90], and what's happened in Europe since, you can see which works best. I'd just like to share with you the thought that whatever the industry may say, whatever the politicians ultimately decide, the technicians will be able to work with.

Mrs Lalis

Well, I think the discussion we have had today shows that there is a way to be politically correct in the maritime field, and I have to admit that I am not politically correct in that sense. However, I think that it is important.

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