



HOUSE OF LORDS

Select Committee on the European Union

Internal Market Sub-Committee

Corrected oral evidence: Future UK-EU transport arrangements

Thursday 18 October 2018

10.10 am

Watch the meeting

Members present: Lord Whitty (Chairman); Lord Aberdare; Baroness Donaghy; Lord German; Lord Lansley; Baroness Noakes; Baroness Randerson; Lord Rees of Ludlow; Lord Robathan; Lord Russell of Liverpool; Baroness Scott of Needham Market; Lord Wigley.

Evidence Session No. 3

Heard in Public

Questions 21 - 28

Witnesses

[I](#): Professor Emily Reid, Professor of International Economic Law and Sustainable Development, University of Southampton; Dr Jenny Jingbo Zhang, Lecturer in Commercial & Maritime Law, University of Southampton.

Examination of witnesses

Professor Emily Reid and Dr Jenny Jingbo Zhang.

Q21 **The Chairman:** Thank you very much for turning up to face this formidable Committee. Our task this morning is to look at the implications of various outcomes of Brexit for the maritime and ports sectors. At 11 o'clock a number of representatives of those sectors will be speaking to us, but we thought it would be helpful to have an overview of the institutional and regulatory structure of the maritime sector worldwide, which is why we have asked you to explain it to us. We have been somewhat confused at various points about which regulations apply where. Would you introduce yourselves and then explain the various interactions between global bodies, in particular the IMO, the OECD and the EU, and domestic rules on the maritime side, and, if you can, cover the ports as well?

Professor Emily Reid: I am a professor of international economic law and sustainable development at the law school of the University of Southampton. My expertise lies in international trade regulation, including the EU internal market, EU external trade relations and WTO rules, so I would not call myself a substantive shipping lawyer.

For today's purposes, my focus is on the implications of Brexit for maritime trade, pertaining in particular to market access, regulatory divergence and convergence, as well as the relationship you just referred to between different levels of regulation: international, EU and domestic.

Dr Jenny Jingbo Zhang: I am a lecturer in the school of law at the University of Southampton and a member of the Institute of Maritime Law in Southampton. I wrote part of the Brexit and shipping report to which you probably already have access. My specialised area is commercial maritime law, with particular focus on international sales of goods on shipment terms and carriage of goods by sea, as well as marine transport documents, such as bills of lading and relevant legal issues.

The Chairman: Thank you very much. Now can you unravel the whole institutional structure for us?

Professor Emily Reid: I would love to unravel the whole institutional structure, which is not straightforward. One of the things that adds to the complexity is that we think of the maritime industry as one sector; we think of it as an industry in itself. It is a distinct sector, but it comprises service provision, freight and passenger transport, and as such it involves the free movement of goods; it involves freedom in the provision of services, or certainly the provision of services; and it engages the free movement of persons. The smooth operation of the maritime sector is predicated on market access, which is reliant on regulatory convergence, reciprocity and equivalence, if not regulatory harmonisation. A whole scheme of different issues and elements, and the regulation of all of those, comes together in the maritime sector in one entity, as we tend to think of it.

The contribution of the maritime industry is hugely significant to economic growth and prosperity in the UK, in the EU more broadly and on an international scale. The sector has its complexity, but it certainly cannot be ignored, and we have to nourish and protect it without being protectionist.

The other aspect that adds to the complexity is the one you alluded to, which is the fact that maritime transport is largely international in nature, so as a starting point it is governed by international agreements. Increasingly, however, within the EU context there is a significant body of EU regulation, a large amount of which incorporates that international regulation and gives it teeth and a binding force that it would not otherwise have.

One of the particular focuses within the EU is port regulation. Increasingly, that requires ships to comply with local regulation as well as the regulation of their flag states. Again, there is a combination of national regulation and other regulation. Obviously, the extent of EU maritime transport regulation and liberalisation is of huge operational significance, because, apart from anything else, within the EU context the liberalisation that we have secures market access, which is what allows the maritime transport sector to operate smoothly.

Reining back and looking at the interaction between domestic and EU law and international law in the UK maritime sector, international law is the overarching framework. Traditionally, we have what is known as customary international law, which is the law that states follow because it is custom and practice. An essential component of it is that states follow that custom and practice because they believe that they are bound to do so; they see it as an obligation.

A significant body of customary international law has been incorporated in international conventions, such as the United Nations Convention on the Law of the Sea, and the treaties and agreements of the International Maritime Organization. Some of it has been incorporated in EU law. The impact of incorporation into treaty is that potentially it gives a greater binding force; depending on the nature of the treaty, it can give greater teeth. UNCLOS binds states that have signed up to it and are parties to a particular agreement. Customary international law is binding on all states. Treaty law is binding on the states that are party to those treaties.

One of the challenges for international law is that, although it may be binding, it frequently does not have great enforcement potential. Some treaties are exceptions to that. For instance, World Trade Organization law has a very sophisticated system of dispute resolution and enforcement mechanisms, but international treaties largely do not have that kind of sophisticated dispute settlement and enforcement mechanism.

In the context of UNCLOS—the treaty on the law of the sea—the IMO has incorporated a significant body of customary international law and

developed international agreements that a significant number of states have signed up to. Those are binding on those states, but one of the challenges for the IMO is securing compliance.

In the UK context, we also have EU law, in the EU context as a whole. The European Union has taken a significant volume of the IMO conventions and incorporated them into EU law. The effect is that EU law, assuming it meets the conditions, will be subject to direct effect, which means that, unlike international law that is binding on the states that are parties to it, or customary international law that is binding on states, EU law also creates obligations and rights that are enforceable by individuals. Where EU law has taken the IMO conventions and incorporated them into EU regulation, those regulations can be enforced directly by individuals, including private parties, in national courts.

In a sense, the IMO is content that the European Union has chosen to incorporate significant bodies of IMO regulation, because it gives it greater binding force and it can be used in a national domestic context. For private parties, incorporation into EU law and domestic law has the benefit that it creates rights that they can enforce, as compared with the international conventions. They might be intended to create benefits for private parties, but the benefits are not enforceable by private parties; they are reliant on states to do it. Those are the three different levels. The UK has also taken tranches of international law and incorporated it directly into national law to make it enforceable in the domestic courts.

The Chairman: No doubt we will come back to some of that, but perhaps we can hear from Dr Zhang.

Dr Jenny Jingbo Zhang: My perspective is more from the general maritime sector, which can be divided into what we call the dry and wet shipping sectors. Dry shipping is linked to commercial shipping contracts, which include international sale of goods on shipment term contracts, carriage of goods contracts and marine insurance contracts. You will be relieved to know that all those contracts will be largely unaffected by Brexit, because most of those contractual regimes are built on domestic law, for example the Sale of Goods Act 1979 and other applicable English law. We have not joined any international conventions in this area. In shipment and carriage of goods by sea area, we have an international convention—the Hague-Visby Rules. Most of our European partners have joined in that convention, so they all have equal rights under it, and our exit from the EU would not cause trouble at that level.

For commercial contracts, including marine insurance contracts, there is not a big problem, but there will be a few problems, which I will mention later. From the dry shipping perspective, there will not be a dramatic issue; it will not cause a dramatic problem.

As regards wet shipping contracts, oil pollution, shipping regulation and management, and health and safety, are largely covered by EU regulation, which incorporates IMO international conventions, to go back to what Emily said. At the moment, the media focus is on wet shipping

and EU regulation, and the impact of Brexit on that, but the dry shipping part is the driving force because it is linked to international trade. At the moment there is not enough attention on that, but, luckily, we do not have too many troubles there—only a few.

- Q22 **Lord Robathan:** To a certain extent you have answered my question, but, to build on what you said, I would like to tease out the key implications if there were to be no deal. From what you are saying, Dr Zhang, legally there are few implications because these are international agreements. The DfT rather agrees with that: "Maritime is a generally liberalised sector. This means that international journeys between the UK and the EU can continue after exit, even under a 'no deal' scenario". I think you would agree with that.

Dr Jenny Jingbo Zhang: Yes.

Lord Robathan: A particular issue that concerns a lot of people is that one of the risks is the recognition of seafarer certificates of competency. It seems to me that an awful lot of seafarers who are not based in the UK have managed to train perfectly well. Are there further implications if we were to leave without a deal that you would see as a problem?

Dr Jenny Jingbo Zhang: We have training for seafarers and we need recognition from the EU point of view.

Lord Robathan: It is currently recognised.

Dr Jenny Jingbo Zhang: Yes. It is currently recognised, and it will also be recognised for a short period because of the EU withdrawal Bill and the retention of parts of EU regulations. Obviously, after the transitional period we are not sure whether it will be recognised in the future. It is not something we can solve by ourselves; it is a reciprocal issue, so we need to do it by negotiation with EU parties, and then we can get recognition of EU seafarer training and certification.

Lord Robathan: Does the EU already have joint recognition with, say, the Philippines, the US, or wherever it might be?

Dr Jenny Jingbo Zhang: Sorry, I am not aware of it. The seafarer issue is more to do with the regulation of wet shipping, which I have talked about. My expertise is more in the commercial maritime sector. If you are interested in the implications of Brexit for the commercial maritime sector, the huge concern is about delay in delivery of goods, the customs union and the cost of goods.

Professor Emily Reid: I would hesitate before accepting the premise that no deal would have relatively limited implications. Although a significant body of the relevant regulation is currently part of our domestic law, or derived from international obligations, the operational implications, if we cease to be members of the European Union without a deal, are such that our access to the market would be considerably more complicated. The impact of demonstrable compliance with regulatory

requirements and customs checks, which would become essential, would have significant operational effects.

If we look at it as a whole, the key element of EU maritime regulation is that it ensures the EU principles of free movement, including liberalisation of services, and that that applies to the maritime sector. It ensures compliance with competition rules, but that obviously allows us currently to benefit from equal competition within the European Union as regards the provision of maritime services. I would hesitate to say that it would not have an impact. I think it has quite significant implications for the maritime sector. As a personal opinion, it is very difficult to overstate that.

It is quite correct to recognise that a significant body of regulation, even including that on seafarers, is derived from the International Labour Organization convention on seafarers' rights. It collated and codified 50 years of seafaring standards into the ILO conventions. Those might be binding, but there is very little in the way of enforcement through the ILO, whereas, when the EU incorporated it, it gave a binding effect.

One consequence as regards ILO standards would be for the training and recruitment of seafarers, which you referred to. If we lose membership of the EU without a deal, we lose any guarantees of recognition of equivalence in training for seafarers, for instance. Again, that has operational implications.

Lord Robathan: I take your point about that, but what about a Filipino, Chinese, Indian or Bangladeshi seafarer? I presume those qualifications are recognised. I understand that an awful lot of our ships are now manned by non-British people.

Professor Emily Reid: Yes. There is a significant market for the training of seafarers in the UK in order to ensure compliance with EU standards. One of the issues we need to bear in mind is that access to EU waters and ports requires compliance with EU regulation and standards. For instance, there are certain jurisdictions that have adopted EU training in order to ensure compliance with those standards.

Lord Robathan: We would have to continue EU training.

Professor Emily Reid: It would be in the interests of the sector to continue to maintain equivalent standards, but the issue Jenny referred to is whether or not there is reciprocity and recognition of that equivalence.

Q23 **Lord Aberdare:** The other side of the question is whether there are specific areas where divergence from some of the EU rules would be good for the UK maritime sector. For example, we have heard a suggestion that the structure of UK ports is rather different from Europe; they are more liberalised, and there might be opportunities if the burden of EU rules was lifted from them. That is the first question.

Another area that has been mentioned is ship recycling, which I have to

say I know nothing about. If we diverged from some of those rules, would it have an impact on our access to EU markets, as Professor Reid mentioned?

Dr Jenny Jingbo Zhang: It has been argued that divergence from the current EU regulations could provide some opportunities. A significant example is the EU port services regulation. Because UK ports are mainly private, they have a different status from EU ports, more of which are state or public ports. There are a lot of harmful EU ports regulations that are not very suitable for UK ports. In order to boost UK trade, and to provide an efficient port service, it can be argued that it is beneficial to diverge from EU port services regulation. That is one example.

Another example is ship recycling. A third example that could be beneficial to us is that we will have a flexible tonnage tax system. At the moment, we cannot be very flexible because that system is under EU regulation and the competition rule on limited state aid.

Lord Aberdare: Is that the flexible tonnage tax?

Dr Jenny Jingbo Zhang: Yes, the tonnage tax for ships. At the moment, we charge tonnage tax under EU regulation, which has a certain limit, but after Brexit and the withdrawal Bill period, arguably the UK could have a flexible tonnage tax system. We could then encourage more ship registration and give more state aid. It really depends on national priorities.

We can look to all those areas to provide opportunities, but the examples I can think of so far are quite limited. For the rest of shipping regulations, divergence from EU regulations will be a problem. All three of the examples we have talked about are domestic issues, built on our domestic law and limited to our own ports and our own UK-flagged ships. We are not talking about trading with the EU within EU waters. If we are going to EU ports or trading in EU waters, there will be problems, so we will have to obey EU regulations.

Lord Aberdare: If we did that, it might have some advantages in the UK.

Dr Jenny Jingbo Zhang: Yes.

Lord Aberdare: We would still have to comply with EU regulations in our relations with them. Would there be any negative consequences of making changes in the UK?

Professor Emily Reid: We have discussed this and given considerable thought to the potential benefits of divergence. One of the issues is that EU regulation tends to be gold-plated. As I said, EU regulation incorporates IMO standards and ILO standards, but in this instance we are talking about IMO standards, particularly IMO environmental standards and standards relating to pollution from ships. The EU gold-plates those, so it imposes higher standards than the International Maritime Organization. If we leave the EU without a deal that constrains

us in any way, we would have an option to revert to IMO standards. We would still be bound by the IMO convention requirements, but we could drop down to those standards.

One area where we could do that would be environmental standards. We could lower the standards relating to pollution from ships, which would have a significant impact on our ports and port cities. We come from Southampton, so we are aware that air pollution is a huge, live issue. If we chose to drop our regulatory standards on environmental issues, clearly there would be environmental costs.

As Jenny has already alluded to, we might lower our shipping pollution standards to gain a competitive advantage for ships transiting internationally and arriving in proximity to the EU, but if those ships wanted to access EU ports they would still be required to comply. The perceived competitive advantage we would gain might not materialise if the ships were travelling on. Everything comes with a cost.

We could look at whether or not we could use state aids, as Jenny said. There might be an opportunity to support the shipbuilding industry, which has been in significant decline, but we would still have to ensure that we were compliant with WTO rules, particularly around anti-subsidies, so we would move from one regulatory constraint to international rules. The EU anti-subsidy rules are very closely aligned to those of the WTO. They are not identical or as specific, but there is a relationship between them. We would still be bound by those WTO requirements, assuming that our independent membership of the WTO is established, which looks to be moving through.

I have talked about the potential to reduce standards. We could decide that we want to enhance our regulatory standards; we could decide to make UK shipping a beacon of good practice and show international leadership. In that sense, it is in the opposite direction. That would come with potential compliance costs but would perhaps have fewer of the disadvantages of lowering regulatory standards.

The point is that we assume we might look to gain a competitive advantage because the maritime industry is commercial; it is trade and it is a huge contributor to the economy, so we tend to think about where we might gain competitive cost advantages. We could, if we wanted to, go the other way, to quality, but any instance of divergence from EU rules potentially impacts on the ability of UK maritime services to operate within the EU.

Lord Aberdare: If we went for higher standards, we would potentially be turning away shipments from the EU, which seems slightly counterintuitive.

Professor Emily Reid: It is unlikely.

The Chairman: Can we turn to the contractual side?

Q24 **Baroness Randerson:** Dr Zhang, you mentioned contracts earlier. If I

understood you rightly, you said that most contracts would not be impacted by Brexit, but you have argued in a paper that there would be “immediate effects on sale contracts and charterparties”, and, for example, that there could be issues about the inability to perform contractual obligations. You even went as far as to suggest that some contracts could be terminated because Brexit could be interpreted as force majeure or the doctrine of frustration. Could you outline those issues in more detail?

Dr Jenny Jingbo Zhang: They are really focused on the performance of contracts. There are short-term contracts for a one-time sale or the one-time charter of a vessel from A to B. There are long-term contracts for periodical shipments or sales by instalments, and renewable contracts that, for example, can be renewed after five years for another five years. The long-term contracts would give rise to more issues, because they might be dealing with the period before Brexit or the transitional period, and they could carry on after Brexit. Once we are outside the EU, a lot of contracts may give, for example, a description of goods; if you are selling goods, you could say that the goods must be of EU origin, and there is an arguable point as to whether the UK will be part of EU origin after the transitional period. Possibly, it will not.

As regards the performance of charterparties, there is freedom to navigate through EU waters and to load or discharge goods in any EU port. A party that used to choose Southampton as the loading or discharge port probably could not carry on that practice, because arguably UK ports would no longer be EU ports. The parties need to be aware of all the terms and conditions of the contract. I would not go as far as saying that one change would lead to frustration or force majeure and termination of the contract. I think that is quite unlikely; there is a minor chance that it will lead to termination circumstances, but certainly the parties need to be aware of it.

Parties may argue that it is impossible to perform the contract. Their supply chain may have used UK products, and if the UK was no longer a member of the EU they could no longer perform the sale contract because the supply chain would be broken. If they are arguing that it is impossible to perform, and they use the words “Brexit” as an “unforeseeable event”, because they did not foresee the Brexit vote five or 10 years ago, the consequence could be a lot of disputes in the courts or by way of arbitration, to decide how the parties perform their rights and obligations under their sale and charterparty contracts.

Another point is about the jurisdiction and choice of law clauses. For most shipping and trade contracts, we are still the world-dominant maritime law centre. Most of the contracts in the shipping and trade industry still choose to apply English law by default, with the High Court in England and London arbitration in their jurisdiction clause. Those clauses could be arguable as well, because our enforcement power for judgments will be questionable after Brexit as we will be outside the Brussels I regulation for EU recognition and enforcement of judgments within EU member

states. The English courts will lose significant power after that, unless we get a separate negotiation for reciprocal treatment.

Baroness Randerson: Do you think that the terms of contracts have changed in the last two years? Has there been sufficient preparation in the industry for what might come?

Dr Jenny Jingbo Zhang: I have not seen much preparation going on; people do not seem to be aware of it, especially small and medium businesses. They do not really look in detail at contract terms. A lot of the terms used are standard ones and pre-drafted; for example, the latest version in use was drafted in 2003. They have no idea what is in the terms and conditions. So far, I cannot see that any of the trade associations are thinking about it and starting to redraft or revise the terms.

Baroness Randerson: Your paper referred to the possibility of inefficient dispute resolution. Could you explain that?

Dr Jenny Jingbo Zhang: For dispute resolution, English law is the applicable law. That is in the EU Rome I and Rome II regulations for contractual and non-contractual obligations. We use Rome I and Rome II because they are EU regulations. At the moment, they are preserved by the EU withdrawal Bill, but after a period of time, arguably the UK will want to think about whether it needs to put them into our domestic law system. That does not seem too difficult.

As long as our domestic legislation recognises the Rome I and Rome II regulations, that can solve the problem, because applicable law does not require reciprocal treatment from EU member states. EU member states will still enforce parties' contracts if they choose English law. For example, if there is a dispute and the jurisdiction point is in France, but the party already has a specific choice of applicable law article that English law is the governing law, the French court will still apply English law. That is the applicable law point.

Jurisdiction and the enforcement of judgments are very problematic. At the moment, we have the Brussels I regulation, or what is called the recast jurisdiction regulation, for mutual recognition between member states of the EU. If one court has been chosen by a party in an EU member state, the other court will stay away from the proceedings in order to avoid multiple proceedings in different courts at the same time. If one court declares jurisdiction, the other court in the EU member state will decline jurisdiction. If an English court gives a judgment, it will be recognised in all 27 member state courts. You can see the power of the English court at the moment, but once we leave the EU, and after the transitional period, there will be a problem. Even if we put the recast jurisdiction regulation into our domestic law, it will not solve the problem, because we need reciprocal treatment.

We can say that all the EU jurisdiction clauses will still be enforceable here and that we will still enforce judgments from EU courts, but EU

courts may not treat UK court judgments as if from a member state, so whether they recognise English judgments will be an issue. They may stay away from English courts once the parties start proceedings, but the jurisdiction and enforcement power of English law will be significantly reduced. That really concerns businesses in the trading and shipping industry because they are using it day to day. The jurisdiction clause is one of the necessary clauses; it is essential to protect dispute resolution.

Q25 Lord German: Can I ask you about the post-Brexit scenario where we need to create a policy that is to the mutual benefit of both the EU and the UK? What do you think would be the component parts of a good deal for the maritime industry that met the interests of both the EU and the UK? Could you also give some indication of the relationship we should have with the European Maritime Safety Agency? The report of the European Parliament says that it would be affected by a no-deal Brexit, so, according to the European Parliament, there has to be some sort of relationship, and a seat at the table may not be sufficient. Is a seat at the table sufficient?

Professor Emily Reid: If we are looking at what would be essential in a post-Brexit agreement in the mutual interest of the EU and the UK, we have to start with what we would lose if we did not have any kind of post-Brexit agreement. The starting point is that waterborne transport has been key to the development of EU trade, both nationally internally within the European single market and externally, and to its economic growth and prosperity, and the UK has been part and parcel of that.

The maritime industry is a key employer and source of revenue in the EU, including the United Kingdom. Without an agreement, one of the implications that arises relates to cabotage, which has already been mentioned. Cabotage is transport between ports within one state and is currently liberalised for EU members. Traditionally, it has been retained for ships of the state where the ports are located. Under EU liberalisation, cabotage has been opened up for EU members so that it can be provided by other EU nationals within the European Union. Without an agreement, that would be lost.

Secondly, we have already alluded to the fact that we currently benefit from EU liberalisation of services. That would be lost without an agreement. It includes freedom of establishment and the free movement of goods, which has an impact on customs and the operation of maritime transport and trade. Thirdly, shipping is essentially about trade and service provision, so loss of the agreement relating to maritime transport would have a significant impact on access to the market.

Turning that around, what provisions would be necessary for an effective agreement? We would be looking for provisions to secure and guarantee market access, and, within that, liberalisation of services, which goes hand in hand with market access in the shipping sector. We would be looking for recognition of equivalence of regulatory standards, which we talked about earlier. That goes to standards for ships, and on pollution and environmental matters, and seafarers' standards. We would be

looking for equivalence of regulatory standards particularly relating to maritime safety, security, prevention of pollution and response to pollution caused by ships. We would be looking for recognition of those standards and for reciprocity in order to make them work.

The reason why we would want to focus particularly on maritime safety, security, prevention of pollution and response to pollution goes to your question about the European Maritime Safety Agency. Obviously, our membership of the Agency would be affected if we left the European Union. At the moment, the European Maritime Safety Agency is open; its members are the member states of the European Union and the European Free Trade Association. Given the importance of the European Maritime Safety Agency, particularly in light of disasters such as the "Erika", it would make sense for the UK to seek an agreement that allowed it member status.

EMSA rules of procedure allow for representatives of third countries. It would be desirable for the UK to push for that status, but membership of third countries is conditional on article 4(2) of the relevant regulation, which states: "Representatives of third countries having entered into agreements with the European Community in accordance with article 17 of the Regulation shall be entitled to attend Board meetings under the terms and conditions specified in such agreements".

Clearly, we would be looking for an agreement between ourselves and the European Union, because article 17 refers to agreements that have adopted and are applying community law in the field of maritime safety, security, pollution and the response to pollution caused by ships, hence the need to make sure that that is contained in an agreement. If we have that contained in an agreement, we would satisfy the precondition to push for representation status at the European Maritime Safety Agency. I do not think we would want to be relegated to observer status in the event of particular agenda items of interest, which would be the alternative. That is possible under the rules of procedure of EMSA. The obvious challenge is to get agreement between the UK and the European Union to satisfy the conditions for representation status, but I think it would make sense to have that.

Lord German: Do you get any sense that the UK Government are dwelling on these matters at the present time and thinking them through?

Professor Emily Reid: I do not think I am best placed to answer that. I know what the conditions are, but, as I said at the outset, my expertise is more on the trade side. I cannot speak for the UK Government. As a Committee, you might be better placed than me, but I am certainly willing to highlight the need for that to be considered and recognised.

Lord German: Could I add a question related to something Dr Zhang said about state aid and mutual recognition of qualifications? Those are two issues that have been raised with the Committee in other dimensions. How significant do you think both those matters are likely to

be, given that we assume that any agreement with the European Union will require some obligation, as it would with the WTO, on state aid or subsidies? How significant do you think that will be as part of any post-Brexit agreement that we need?

Professor Emily Reid: We would want recognition of qualifications because it is essential to facilitate the free movement of persons and freedom of establishment. If we are looking to secure the facilitation of maritime trade with the EU after Brexit, we would want to secure that freedom; it is part and parcel of access to the market, so we would need recognition of qualifications to facilitate that. It is all very well to have the right to take up employment or provide a service, but if your qualification is not recognised you do not have a right that you can effectively enjoy.

Under EU law, we are very constrained on state aids, particularly in regard to the shipbuilding industry. We would want to consider how that could be taken forward, but, as we have already recognised, there are WTO rules on subsidies, and what is and is not legitimate. Regardless of what we might agree with the EU, we would still be constrained by the WTO subsidy rules.

Q26 **Baroness Donaghy:** You have indicated that currently EU companies may fly the UK flag, even if they are not resident in the UK, provided they are represented by a UK resident or an EU company with a place of business in the UK. The UK Chamber of Shipping concluded that, after we leave the EU, the UK flag should continue to be recognised as an EU flag for fiscal and environmental purposes. Would you elaborate for us the implications for existing and future registration interests with the UK flag?

Dr Jenny Jingbo Zhang: At the moment, the UK ship registry and the UK flag are regulated by the Merchant Shipping Act, which is our domestic law, and the Merchant Shipping (Registration of Ships) Regulation, which is our domestic regulation. They identify that we can register a ship owned by qualifying owners. Qualifying owners identified under EU regulations approved at the moment include EU member states, EEA nationals and bodies, as well as European economic interest groupings recognised by EU law and regulation.

The problem for us is whether after Brexit, we want to continue to recognise EU or EEA nationals, and they will continue to be qualifying owners under our domestic law, so basically the UK has a say. We could say that we want to remove the legal identities of those parties and leave UK-qualified owners only. We could open up internationally and welcome all qualifying owners from around the world. It depends on our national priorities and the economic benefits. It also depends on the citizen status that we negotiate with the EU, as well as reciprocal matters relating to how the EU will open up to the UK ship register.

At the moment, we recognise all EU or EEA nationals and bodies to register under the UK flag, but we can cut that off by removing them in the future. Once we have removed them, those people will be ineligible, and their ships, at the moment registered under the UK flag, could be

terminated. Once they are terminated, the next step is uncertain, but from previous evidence, if they have no British connections they can be forced by the English courts to sell their ships. That is for the existing ones. For future ones, once we stop qualifying EU or EEA nationals, they can no longer register under the UK flag. It really depends on which way the UK wants to go with its shipping industry interests and benefits.

I have a supplementary point about the impact of the free movement of the ship registry. At the moment, under EU regulation, EU member state ships can change or switch registry within the EU. There is no extra documentary requirement, only the basics. We cannot impose extra requirements on ship registration, but after Brexit and the transitional period we could increase the requirements for switching. That is giving rise to problems. EU ships currently registered in the UK are concerned that they would not be allowed to switch back to another EU flag, so there is a rush of people registered under the UK flag moving back to the EU, where there are 27 member states that they could switch their registry. Obviously, it poses a problem for the UK flag at the moment.

Baroness Donaghy: What is the worst-case scenario, and what would be the economic implications?

Dr Jenny Jingbo Zhang: The economic implications will be the cost. The UK flag is quite well recognised, because we have very solid regulations to maintain ships to good standards, but once we decrease the fleet there could be a kind of laxity in the international ship registration industry. There is also the tax problem; we will probably have significantly reduced revenue.

Q27 **Lord Russell of Liverpool:** In September 2017, the Transport Secretary, Chris Grayling, announced that the Government would deliver a strategy to foster the growth of the maritime sector post Brexit and launch "a British shipbuilding 'renaissance'", and to that end the Government would consult widely to build that strategy. Assuming that he was intelligent enough to ask you for your view on what the components of the strategy should be, what would be your advice?

Dr Jenny Jingbo Zhang: Is that how to boost the UK maritime sector?

Lord Russell of Liverpool: Yes. The implication is that post Brexit there will be enormous opportunities, and the idea is to build a strategy that identifies, takes advantage of and has an implementation plan to realise those opportunities.

Dr Jenny Jingbo Zhang: We should maintain our leading status as the world maritime law centre, because that is linked to financial services as well as to our trade and our economic growth. The point we absolutely need to recognise is that, as well as the English court jurisdiction and English law, we have London arbitration. We absolutely need to boost that, because nearly every single commercial shipping contract includes London arbitration. At this very vulnerable moment, other parts of the world want to take the lead on that and shift the legal centre to the east,

but the UK absolutely needs to maintain its lead. We had that centre even before the European Union. Why can we not keep it?

Lord Robathan: Is part of that the Baltic Exchange?

Dr Jenny Jingbo Zhang: It is part of the legal service, but we also have London arbitration.

Professor Emily Reid: As we have said throughout, the maritime sector is inherently international. Whatever form the strategy takes, it would have to secure continued liberalisation. If the strategy post Brexit did not allow for continued market access with our largest trading partner as it currently stands, it would face considerable challenges. We would need to pull out all the stops to secure market access and continued regulatory equivalence and reciprocity with the European Union; otherwise, there would be a considerable obstacle to the renaissance of the shipping trade in the United Kingdom.

We have talked a little about the potential for support for the shipbuilding industry, taking that as an opportunity. It will not be possible if we are required to comply with EU state aids in a market access package, and the competition rules are part and parcel of market access. Equally, we have recognised that any kind of support to the maritime industry sector, whether shipbuilding or other bits of it, would have to be compliant with WTO and other international regulation.

Jenny has already alluded to the opportunity to re-establish leadership in the maritime sector, but there are two different ways of doing it. One is a deregulatory approach to increase the number of entities coming into the sector. We could choose to look at the ship register. There has been a suggestion about opening up the potential for access to the UK ship register, not only to allow EU and EEA nationals to register but to open it more broadly to increase the size of the UK fleet. However, we have to ensure that while doing that we do not become less attractive.

The obvious risk of any kind of deregulation is that we become less attractive, so, in terms of opportunities and strategy, we would ideally be looking at how to lead the way internationally. The UK as a leader in the international maritime sector, and, for instance, leadership within the IMO, would be a possibility. Currently, although the United Kingdom is a member of the IMO, when we are engaged in it we are bound by European Union common positions; the EU is not a member of the IMO, but all the member states are and they act as a bloc. Once we are no longer part of the EU, the opportunity opens up for leadership and a more independent stance within the IMO, but we would have to think carefully about how we wanted to use that leadership, or the direction in which we would want to take it. In an ideal world, we would be looking at enhancing standards for all those engaged in the maritime sector.

Lord Wigley: I do not want you to expand on it unduly, but could you indicate the direction? You have spoken on the general UK context. Does that apply equally to Gibraltar?

Professor Emily Reid: Which particular aspects?

Lord Wigley: Are there any aspects of your answers that you believe do not apply to Gibraltar?

Professor Emily Reid: I will have to reflect on that, but I am quite happy to come back to you.

Q28 **The Chairman:** If you can find the answer, could you write to us?

I have two quick points. First, right at the beginning, you were talking about the enforcement of regulations, most of which is through the British courts, as you told us subsequently. Is there any enforcement mechanism in this area that we would have to reinvent outside the EU, because hitherto European institutions or global institutions have been part of the enforcement mechanism? For example, in the environmental field generally we might find the need to establish a new institution. I am told that Michael Gove is working hard on that. What about the maritime area?

Professor Emily Reid: A large part of the enforcement of international regulation is currently done through incorporation in EU regulations, which are given effect in the UK domestic context and can be enforced in the UK domestic context. To the extent that EU acquis are translated and incorporated into UK domestic law, that would be secure.

The Chairman: It would achieve the same thing.

Professor Emily Reid: A question would arise once we moved away from that and started to diverge, but presumably in doing that we would be creating new laws that would be capable of enforcement.

The other side of it would be international norms that currently have binding effect on us through EU regulation. If there were new international norms, and a treaty was agreed that we did not incorporate directly ourselves, there would not necessarily be a binding enforcement mechanism by virtue of those norms as part of the international agreement. Do I need to turn that around?

The Chairman: My second point is about the dominance of British practice across the maritime industry, which goes back to when the League of Nations, the United Nations and other bodies were set up. We were the dominant fleet; we were also the dominant shipbuilding sector, but that is no longer the case. Will all the legal, contractual and insurance expertise that reflects our one-time dominance in that market suffer if we come out of the EU, or could it be maintained? I am thinking particularly of the legal and insurance side.

Dr Jenny Jingbo Zhang: On the insurance point, there is a bit of an issue because of passporting rights. Insurance companies, such as Lloyd's, are worried that they will not have passporting rights to provide services in the EU, so they are opening branches in Brussels to try to secure their position in both London and the EU. There are a lot of

arguments about whether they can continue providing services after Brexit. From the legal point of view, for contracts and commercial practice, it has always been the case that English law is the dominant law, and the convention and our domestic law has been copied in other countries, so I do not think we will lose the impacts.

The Chairman: Thank you very much. It is very interesting. In a lot of sectors, we find that the sector itself may be a bit vulnerable but the lawyers are doing quite well. Thank you very much for your expertise. We will move on to our other witnesses. We are happy for you to stay, and, if anything else occurs to you, you can write to the secretariat.