

Brussels 'should not be sole negotiator'

Top lawyer says individual states' views should be sought regarding international conventions

Sandra Speares

FORMER Ince & Co senior partner Patrick Griggs rejected the suggestion this week that the European Commission take on sole negotiating rights for member states when debating the introduction of international conventions.

Mr Griggs told delegates at the annual Donald O'May Memorial Lecture that he "disagreed profoundly" with the notion that having a supra-national body negotiate on behalf of member states was the best way of promoting the drafting and implementation of international conventions.

Member states had a "huge diversity of opinions and views", he said at the event, organised by Southampton University's Institute of Maritime Law.

Negotiation and implementation of international conventions presented a number of pitfalls that were ignored "at our peril", Mr Griggs said. He referred back to the recent Cadwallader lecture in which concern had been expressed at the poor rate of uptake of international conventions.

Conventions had a long gestation period, Mr Griggs said, citing as an example the 1974 Athens Convention, which "spent 13 years in limbo", with a further five years required to finalise the text. The need for a bunker pollution convention was first recognised in 1968 but did not come to fruition until 2001, he pointed out.

Long gestation periods for conventions often led to problems, particularly when casualties occurred. For example, in the case of the *Herald of Free Enterprise*, the UK called for a new loadline convention, which met with a lukewarm international response, Mr Griggs said.

The UK had been close to "litigating

unilaterally" before a regional solution was reached through the Stockholm Agreement. "There is a real risk that if an international solution is too long-winded, a local solution may be applied," he said, adding that this was "not good for international uniformity".

Another concern was putting monetary values into conventions that could be out of date by the time the convention came into force.

Member states could also have different attitudes to monetary values, finding them out of context with their local circumstances.

For example, the 2002 Athens Protocol would probably be ratified by EU member states, but other countries might consider the figures unrealistically high for their domestic consumption, Mr Griggs said.

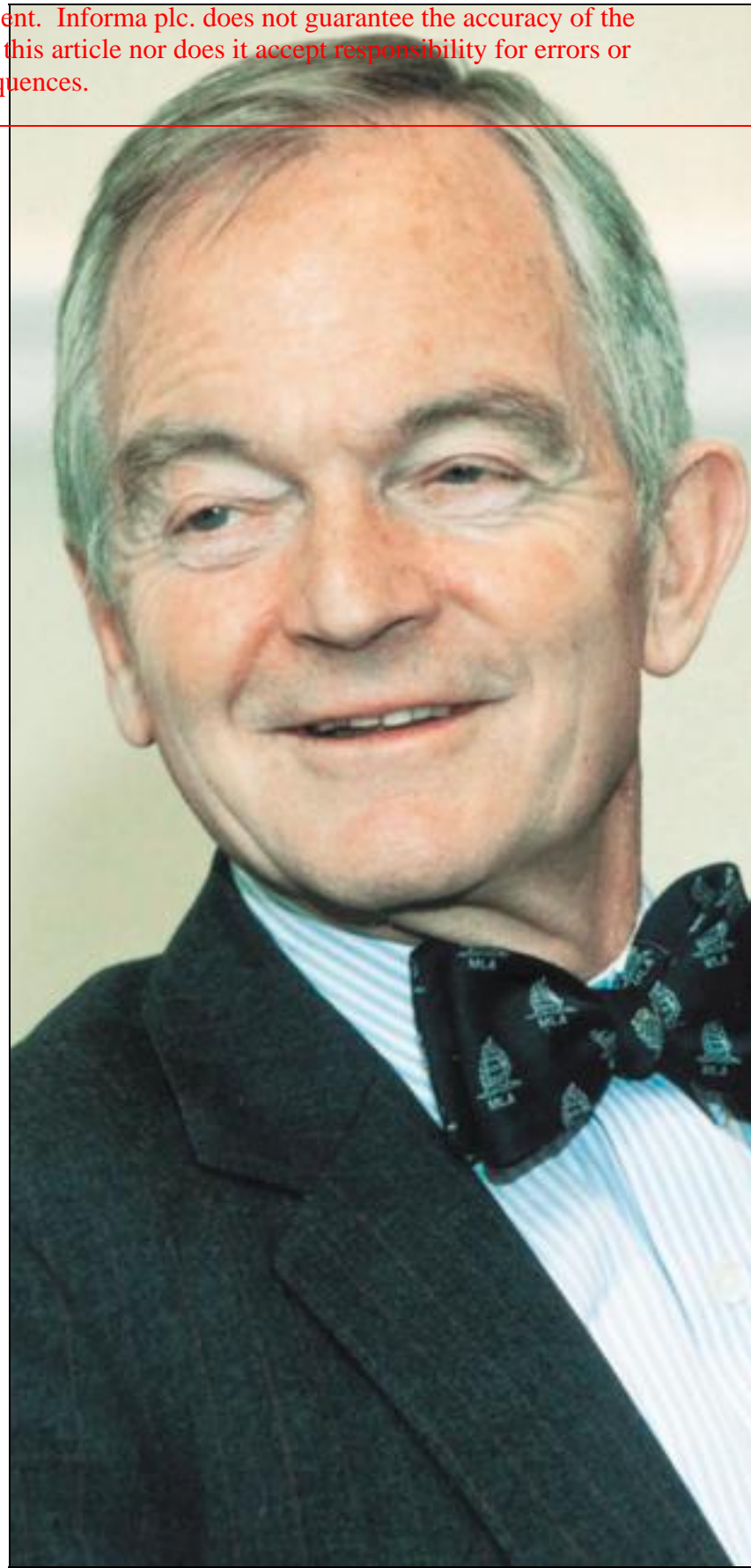
He was particularly critical of the "defect in a ship", as defined in the protocol. "If the definition is intended to bring clarity, it fails dismally in its purpose," he said. Mr Griggs had walked out of a meeting in protest while the definition was being discussed, and advised "keeping things simple" and leaving the courts some latitude to furnish the detail.

Mr Griggs said he could "chide" some governments for only ratifying those conventions that provided benefits to themselves, citing as examples the Civil Liability and Fund Conventions.

Another example was South Africa's failure to ratify the 1999 Arrest Convention, which the South Africans could argue was a "nice little earner".

The United States, he said, could also be criticised for participating in formulating conventions and then not ratifying them.

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Griggs: told delegates that pitfalls during implementation are ignored 'at our peril'.