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Dear Erik,

You have asked the Correspondence Group for final comments by 8th March, prior to the 91st session of the Legal Committee concerning the implementation of the Athens Protocol 2002. As advised by telephone on 8th March this submission is, for the reasons given, late but I trust will nevertheless be accepted.

The last 20th February meeting of the Correspondence Group failed to reconcile the requirement for passenger liabilities arising from terrorism to be guaranteed, even at the level of a \$400million cap, because of the practical difficulties in guaranteeing an insurance policy that is only underwritten with absolute exclusions and termination of cover provisions and must also cover other liabilities, such as crew, removal of wreck and collision. The \$400million cap proposal for guaranteed passenger liabilities arose from a meeting on 1st February that included underwriters.

I had a meeting with a leading underwriter last Wednesday who had attended the 1st February meeting. He confirmed the \$400million figure was discussed as being an indicative available limit on the basis that \$500million was currently purchased in the market for War P&I excess of hull values by the P&I clubs. This contract could act as a reasonable proxy for what is available in the market but, at all times, subject to the standard war risk exclusions and termination of cover provisions. However, should there be any increase in terrorism activity with subsequent claims the capacity required to support this \$400million level could easily become optimistic. Consequently guaranteeing \$400million to passengers, thereby creating a first loss for passenger liabilities, would risk squeezing out cover for crew, removal of wreck and collision liabilities and is not acceptable.

There is another problem being that the provision of War P&I insurance, covering terrorism liabilities, is fragmented between the commercial war risk markets and the P&I clubs. War P&I insurance is placed in two separate layers with the first layer placed in the commercial markets under a War Risks policy to the ship's hull value and the P&I clubs providing a \$500million excess War P&I. With each ship having a different hull value, there is no commonality of cover limit. Given time, the insurance markets could resolve this issue but, since passenger vessels only account for 5% of the P&I clubs' entered tonnage, there is a low incentive.

Finally, underwriters cannot be guarantors and will not establish a separate guarantee company. Since the International Group of P&I clubs have already declined to guarantee terrorism cover for passengers, the only possibilities for providing the required guarantees are either through the existing OPA '90 COFR guarantors, such as SIGCo or Shoreline, or the establishment of a special purpose Athens Protocol guarantee company for terrorism liabilities for passengers.

In my opinion the cost of setting up a guarantee company authorised to guarantee limits of \$400million will be expensive and not commercially viable on just 5% of the tonnage entered in the P&I clubs. Consequently, the OPA '90 COFR guarantors are the only potentially viable option. With SIGCo, the biggest of the two being predominantly owned by operators of tankers and the trustees of four P&I clubs, I doubt whether their shareholders will permit them to act for passenger vessels. For similar reasons Shoreline are unlikely to be interested, particularly since Carnival, the biggest cruise line, has the capability of establishing their own guarantee company.

I therefore submit that the Athens Protocol 2002 guarantee requirement for passenger liabilities arising from terrorism, restricted to an operator being found to be at fault over lack of security, remains insoluble. Flexibility will therefore be necessary to stop the Athens Protocol 2002 following the fate of the 1990 Protocol and prolong the uncertainty surrounding passenger liabilities for the foreseeable future.

It is incomprehensible that a risk that has claimed just one single life, the "Achille Lauro", can be allowed to frustrate improving the compensation levels to passengers arising from the major maritime risks of fire, collision and sinking that have, since 7th October 1985, claimed 19,380 lives. Despite the universal acknowledgement that passenger liability levels have long been considered derisory, as evidenced in 1987 with the owners of the "Herald of Free Enterprise" arranging additional compensation over and above the limitations under Athens Convention 1974, these limits might continue to prevail. This is likely to result in states following the example of the US by each introducing their own passenger liability laws and regulations.

Yours sincerely



Graham Barnes