

PROVISION OF FINANCIAL SECURITY

Intersessional correspondence on the availability of financial security in respect of the Athens Convention, 2002

Submission by Norway

SUMMARY

- Executive summary:** Ongoing discussions has not revealed any new developments in the insurance market to cover the compulsory insurance under the Athens Convention, 2002
- Action to be taken:** Paragraph 13
- Related documents:** LEG 88/12/2

1 At the 88th session of the Legal Committee, the International Group of P&I Clubs pointed out two issues relating to the compulsory financial security provisions of the Athens Convention, 2002 in document LEG 88/12/2. These are:

- The **amount issue**; that is the issue that the Athens Convention on passenger liability requires a higher amount of compulsory insurance and of liability than former IMO pollution conventions.
- The **war risk issue**; that is the issue that article 3 of the Athens Convention¹ is not strictly confined to non-war P&I insurance, but may also affect war risk insurance. Although *war and terrorism risks are excluded from the Athens liability*, this affects the liability of the carrier for failing to protect the passengers against terrorism in the way prescribed, e.g. by security checks.

2 In line with the decision of the Committee in LEG 88/13, paragraphs 198-200, these problems have been discussed intersessionally. This document is a report of this correspondence put together by the Norwegian coordinator.

3 After the 88th session of the Legal Committee, 16 letters have been distributed to well over 100 addresses. The following government delegations have contributed: Sweden, UK and Norway. The following NGOs have contributed: BMS Group, ICS,

¹ The text of the Convention and the intersessional correspondence can be found at <http://folk.uio.no/erikro/WWW/corrgt/index.html>.

IUMI and P&I. The BMS Group is a firm of insurance brokers that does not have observer status in the IMO.

4 The intersessional work **has not identified additional issues** that have to be addressed before the Convention enters into force, and LEG 88/12/2 can therefore perhaps be taken to be exhaustive in this respect. The Conference Resolutions to the Athens Convention concerning non-compulsory insurance and concerning the duties of the Convention under bareboat chartering (see LEG/CONF.13/22) have not been addressed.

5 In the correspondence, the possibility to resolve the "war risk issue" by **insuring in the war risk market** has been explored. The war risk market is a market that to some extent is separate from the market in which P&I clubs have their general reinsurance. Although quite high amounts are insurable in this market, the insurance will generally be subject to cancellation on very short notice and other clauses that would make it unpractical for compulsory insurance purposes. It has therefore been suggested that one should concentrate on finding solutions in the non-war market.

6 Another possibility that has been suggested, is to set the Convention into force, and **trust that the market will offer the necessary insurance when demanded**. This has worked well in other cases, and the "war risk problem" has been overcome in respect of CLC certificates. Some correspondents have however warned against this approach as being unrealistic. A suggestion that offering Athens insurance could be set as a condition for licensing insurers has been mentioned, but some correspondents have pointed out that this would not make insurers more willing to offer Athens insurance.

7 A third possibility discussed is to arrange **mandatory pooling** between shipowners, e.g. by means of implementation legislation. It has been pointed out that this will not spread the risk adequately, and that it is unclear how a pool like this could be set up and administered.

8 A fourth option that has been mentioned could be to **clarify the carrier's duties in respect of preventing terrorism**, in the hope that this added clarity would make the risk easier to insure. A clarification by reference to the ISPS Code has been suggested. However, some correspondents have found the Code too far-reaching in this respect, while others would like additional requirements. It has also been pointed out that clarification in respect of "the war risk issue" would not suffice; terrorism related risk should be excluded altogether. The mechanism suggested for clarification (and exclusion) is article 31(3) of the Vienna Convention on the Law of Treaties (informal agreement between all State Parties).

9 A fifth option could be to establish a **government reinsurance scheme** (leaving carriers with the final bill). It is the clear impression of this delegation that this option has found more favor in the industry than in government circles.

10 A sixth option that has been mentioned is to make use of the **IOPC Fund and HNS Fund to establish a reinsurance scheme** (leaving carriers with the final bill). The response to this idea indicates that it should not be explored further.

11 A seventh option that has been mentioned, is to **reduce the "amount problem" temporarily by keeping the 1996 LLMC limits for a while**, as expressly allowed by article 19 of the Athens Convention, 2002. The idea is to introduce the benefits of the Athens Conventions sooner in this way, including the enhanced limitation amounts for individual accidents, because one than can concentrate on solving the "war risk issue." (The LLMC will only affect the catastrophic incidents.) This idea has been welcomed by the industry, although with the question how one could ensure that all States Parties to the Athens Convention actually also maintain the LLMC limits. No government, including Norway, has expressed support for the idea.

12 Not unexpectedly, there is no offer in the market today that satisfies the Athens insurance requirements. The coordinator will suggest that the informal correspondence group continues to explore the possibilities and strategies with focus on the options referred to in paragraphs 6, 7, 8 and 11 above. The work will continue in the period between the submission of this report and the 89th session of the Legal Committee.

13 The Committee is invited to take note of this document, and to encourage further intersessional work.