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To the Athens Correspondence
Group

Dear Correspondents,

Athens Convention - discussion round # 3

I think it is fair to say that the correspondence this far has not revealed any consensus on how to implement the Athens Convention pending an offer for the required insurance in the market. Thus is also what is reported to the Legal Committee in a document that is circulated together with this letter. The purpose of this letter is to outline strategies for governments that wish to implement the Athens Convention as soon as possible despite the present uncertainties.

Strategy I: Straight ahead!

The idea of this strategy is to set the Convention into force in the expectation that the market will find solutions when necessary. This has worked well before. The market will not come up with an offer before there is a real demand, but, on the other hand, is likely to develop an offer when they have customers that must have the insurance. It is likely that the "war risk issue" can be resolved in context of the Athens convention when the similar issue has been resolved under CLC.

The downsides of this strategy are that both governments and industry is put under unpleasant pressure until it is clear that the strategy has succeeded, and that ferries and other ships may, in the worst case, have to be detained if a solution is not found in time.

Strategy II: Messaging the market

The idea of this strategy is that governments should help the market to develop, so that Athens insurance eventually will be offered. Measures could include:

- Clarification of the carrier's risk in respect of terrorism prevention, e.g. by reference to the ISPS Code. This will perhaps help to resolve "the war risk issue."
- Allowing Athens claims to be limited by the 1996 LLMC in an initial phase, so that the insurance market can concentrate on the "war risk issue" rather than the "amount issue."

The downside of this strategy is that it will need time and discussions to succeed, and that one is not guaranteed to reach a satisfactory result, especially as no government has expressed support for the last bullet point so far.

Strategy III: Kick the ball back

The idea of this strategy is to implement the Convention fast and to the letter of the Convention, but with room for improvement in respect of financial security. The insurance certificate will be issued on the basis of two different kinds of security:

- a) The major part of the financial security will be covered by a blue card with direct action from a P&I club or a similar institution, with its possible limits in respect of amounts and/or damage partially caused by terrorism.
- b) The part of the financial security not covered by the blue card will be covered by a pool of carriers, similar to that which applies for overspill claims in the P&I system. This pool will be uninsured "other financial security" within the meaning of article 4bis. The pool will consist of all carriers applying for an insurance certificate in one state or one region, and will be established by national legislation in that state or that region. That legislation will simply state that for (specified) claims not covered under the standard conditions of a P&I cover, the holders of a valid Athens insurance certificate issued in that state or region will be jointly and severally liable. In this way, the required financial security will be established without the intervention of the insurance system, and regardless of any limitations of that system. The constitution of the pool will not require costs or organizational measures.

The downsides of this strategy are that security established under b) is not optimal, because the pool is small, there is no claims handling system, etc; and that it exposes carriers to great, uninsured risk.

Recommendation

My personal recommendation is *Strategy III*. Unlike under Strategy II, the Convention will be implemented fast and efficiently. And unlike Strategy I, governments will not be put under pressure if the development in the insurance market should be slower than expected.

Strategy III exposes carriers to uninsured risks. Arguably, however, this is after all better than the alternative; letting individual passengers carry the same risk.

Also, Strategy III includes, for a part, a pooling arrangement that is not optimal as financial security. However, it is submitted that it is better for governments to accept this kind of security for a fraction of the risk than to postpone the implementation of the Convention. It is likely that this solution very soon will be replaced by commercial insurance solutions.

Invitation

Correspondents are invited to formulate alternative strategies, and comment on the strategies presented in this letter. Please use email nifs-athens@jus.uio.no or fax +47 9738 4998.

Regards,

A handwritten signature in blue ink, appearing to read "Erlend Høy".