



INTERNATIONAL CONFERENCE ON THE
REVISION OF THE ATHENS
CONVENTION RELATING TO THE
CARRIAGE OF PASSENGERS AND THEIR
LUGGAGE BY SEA, 1974
Agenda item 6

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**CONSIDERATION OF A DRAFT PROTOCOL OF 2002 TO AMEND THE ATHENS
CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR
LUGGAGE BY SEA, 1974**

Insurance and statistics

Submitted by Norway

SUMMARY

Executive summary: This paper provides information and analysis relevant to the limits of draft convention articles 4*bis* and 7.

Action to be taken: For information

Related documents: LEG/CONF.13/3

Purpose of paper

1 The purpose of this paper is to provide information and analysis that may be relevant when the limits of the prospective Protocol are to be determined.

Inflation etc.

2 From 1974 to 2002 the purchasing power of the SDR¹ has been diminished. To compensate for this, the limitation amounts for death and personal injuries (Convention article 7) must at least be adjusted accordingly. However, this is not a calculation that yields a clear picture, as the following table shows:

¹ About SDR, see <<http://www.imf.org/external/np/tre/sdr/basket.htm>> and <<http://pacific.commerce.ubc.ca/xr/SDR.html>>.

	Nominal value ² (A)	Real value equivalent ³ (B)	B in % of A
1974 Convention	46,666 SDR	World 1,322,534 SDR	2,834 %
		Developed Countr. 171,369 SDR	367 %
		Developing Countr. 38,896,111 SDR	83,350 %
1990 Protocol	175,000 SDR	World 539,583 SDR	308 %
		Developed Countr. 222,912 SDR	127 %
		Developing Countr. 1,736,458 SDR	992 %

Table 1

3 The inflation rates vary a great deal from country to country.

4 To get the full picture, exchange rates must also be taken into consideration. To the passenger, the SDR only has value insofar as it gives value in local currency. And to the carrier, a fixed limitation amount is of no use if it is increased all the time because of exchange rate fluctuations. This effect also varies greatly from country to country.

5 In many States, the awards for compensation for personal injuries have increased more than the average inflation, and for these States there is a need for an additional increase. For example, while personal injuries awards in Norway ten years ago rarely exceeded NOK 1 mill, the awards are now rapidly approaching NOK 10 mill without any significant change in legislation.

6 Some States may also have changed their healthcare system in such a way that medical expenses are no longer covered by that State without recourse (but by private companies that are likely to claim recourse). This may also call for an additional increase of the amounts for which a carrier is liable, independent of the general inflation rates.

7 Altogether, inflation indices do not provide much guidance in the revision of the limitation amounts. The disparate effects of the limitation system over time do however underline the need for the opt-out clause in the draft Convention article 7, paragraph 2; there must be a possibility to adjust the amounts nationally.

8 A more elaborated version of this discussion with calculations is found on <http://folk.uio.no/erikro/WWW/corrgr/insurance/inflation.doc> > or <http://folk.uio.no/erikro/WWW/corrgr/insurance/inflation.pdf>>.

Insurance capacity

9 We have consulted all the leading brokers, and have found no broker that will maintain that there will not be insurance capacity for USD 2 billion in the commercial market (the market P&I Clubs use for reinsurance). For a compulsory insurance amount of SDR 350,000, only about 75% of this amount is necessary.⁴

10 Brokers indicate that insurance for wilful misconduct and with direct action in principle is available in the market. This is well known from aviation insurance. However, the larger the amounts and the more onerous the conditions, the more difficult to arrange insurance. If the

² The nominal values of the 1976 Protocol, where SDRs were introduced, are used.

³ We have used consumer price indices from International Monetary Fund: International Financial Statistic Yearbook 2001 pp 128-129.

⁴ Calculated on the basis SDR 1 = USD 1.32961 and 3000 passenger ships (few ships are larger than that).

market is utilized to its maximum, there will be no competition among underwriters, and the premiums will increase.

Insurance basis

11 The premium for the total reinsurance package of the P&I Clubs in the International Group, where passenger risks form but a very small part, is about USD 150 million. This reinsurance package covers about USD 2 billion. Considered the large numbers of passengers worldwide – ca. 800 million annually – there will be no problem to finance the insurance premium for the new compulsory insurance.

12 Not all passengers will necessarily fall within the scope of the prospective Convention, and the premiums will be affected by the new rules. However, one can safely say that additional cost for each passenger would not be prohibitive. If only half of all passengers contribute to a premium equal to the full P&I reinsurance premium for all types of ships today, it would still only be 38 cents per passenger.

13 Cruise passengers are a small fraction of the total number of passengers, ca. 12 million annually. In the different regions, the number of ferry passengers is distributed in this way:

Australia	20,019,161
Baltic	161,527,590
Black Sea	23,257
Far East	223,073,381
Japan	4,389,065
Mediterranean	114,658,191
North America	125,120,890
North Sea incl UK	108,086,533
Red Sea	1,079,535
Russia Domestic	23,700,000
South America	29,124,509
Total	810,802,112

Table 2

14 The figures above are based on figures from ShipPax Information 2001. Further details and documentation can be found at <<http://folk.uio.no/erikro/WWW/corrgr/index.html - ins>>.

P&I Clubs

15 The P&I Clubs have communicated to the Legal Committee that they would not necessarily offer to issue the insurance certificates required under the prospective Protocol, in particular if the limits on the compulsory insurance or the carriers’ liability are high, if there is no wilful misconduct defence or if there is direct action to a too large extent.

16 Governments could respond to this by designing the system to particularly favor the clubs, or to set as a condition for licensing of the clubs that they issue compulsory insurance certificates under the prospective Convention. We believe that one should avoid interfering in the market in any of these ways.

17 It would certainly be desirable if the Clubs would participate in the insurance arrangements under the prospective Convention, at least for a part. Clubs are often rapid and liberal in claims handling, and are efficiently organized. But there are reasons to believe that they

will participate even without special favors. First of all, cross- subsidizing of passenger carriers could be prevented by new pooling rules. And secondly, the majority of shipowners that do not carry passengers will most likely wish to play together with passenger carriers in the reinsurance market rather than against them.

18 For us, it is important to emphasize that it is for the industry, and not for Governments, to decide what are the best way to arrange for the fulfillment of the new insurance rules for passengers. For Governments it suffices to see that it is possible to meet the requirements of the new rules. On the basis of consultations with brokers, we are confident that it is possible.
