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To the Athens Correspondence Group

Dear Correspondents,

Revised draft submission for LEG 92

Please find attached a revised draft submission for LEG 92. I wish to express thanks to all who have submitted formal or informal comments. The submission is due this Friday.

Informal discussions will continue, and may result in an additional paper before the 15 September deadline for non-bulky documents. The discussions involve partial capping of terrorism related liability. However, failing a positive response from shipowners and insurers, it is likely that no additional paper to this effect will be submitted.

Regards,

Erik Røsæg

Encl.

LEGAL COMMITTEE
92nd session
Agenda item 5

LEG 91/5/?
8 August 2006
Original: ENGLISH

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PROVISION OF FINANCIAL SECURITY

(ii) Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

Draft Guidelines and Reservation Clause

Submitted by Norway

SUMMARY

Executive summary: This is the draft text developed by the Correspondence Group pursuant to its mandate at LEG 91. The main thrust is that States Parties to the Athens Conventions should make a reservation when ratifying, so that the insurance requirements in respect of terrorism could be somewhat reduced. The exact reduction of the requirements at any time should be determined by Guidelines of the Legal Committee.

Action to be taken: Paragraph 19

Related documents: None

Introduction

1 At the Diplomatic Conference adopting the 2002 Athens Convention, an overwhelming majority favored that the carrier's liability and insurance obligations should extend to situations where there was a failure to prevent terrorism (not amounting to war[1]) in two situations:

- Negligence on the carrier's side
- Other situations where the damage was not "wholly caused" by terrorism (but, *e.g.*, by lack of control)[2]

In both cases the liability and insurance obligation is limited; the *insurance obligation* is in both cases limited to SDR 250,000 per passenger the vessel legally can carry.[3]

2 At the 90th session of the Legal Committee, there was general agreement that the insurance requirements of the 2002 Convention should be looked at in respect of terrorism related claims due to the disturbance of this part of the insurance market. It was resolved that States Parties should make a reservation when ratifying the 2002 Athens Convention, so that they would not have to enforce the insurance requirements of that Convention in respect of terrorism to the full extent. It was further agreed that the details of this reservation should be set out in Guidelines by the Legal Committee to ensure uniformity and a possibility to adjust to the changes in the insurance market over time. The IMO Assembly later adopted a resolution to the same effect (A.988(24)).

3 The task of the Correspondence Group[4] before LEG 92 is to produce a draft text for Guidelines/Reservation for the implementation of the Athens Convention "along the lines

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1 In the Convention, there is no liability for damage caused by war (Article 3). The text of the Convention can be found at http://folk.uio.no/erikro/WWW/corrgr/Consol.pdf .

2 See Article 3(2) and 3(1), respectively.

3 The *liability of the carrier* is 400,000 (Article 7), but if there is no negligence 250,000 (Article 3(1)).

suggested in documents LEG 91/4/1[5] and LEG 91/WP.3[6] and within the framework of resolution A.988(24)[7]."[8] It is expected that other proposals that have been circulated in the Correspondence Group also will be submitted.

4 The annexed draft text (Annex I) is almost identical to the one proposed in document LEG 91/4/1, which again in substance first was circulated in the Correspondence Group in May, 2005[9]. This proposal was discussed in length and in substance at the 91st session of the Legal Committee. **The task of the 92nd session is therefore to consider the draft Guidelines/Reservation and make a final decision on them.** Any further postponement of a final decision in the Legal Committee of the contents of the Guidelines/Reservation should be avoided, in particular bearing in mind that the 93rd session of the Legal Committee will not be convened before in October, 2007.

5 While the basic legal framework of the Guidelines/Reservation has been fairly well established as an option since before the 90th session of the Legal Committee, a few important points have not been solved to the full satisfaction of all. Some alternative approaches have been put forward. These alternative approaches, however, have not gained sufficient support by Governments. At this stage, it is not the time for new ideas or reopening the discussions of the 90th session of the Legal Committee, but for decisions based on the conclusions arrived at. A decision on the content of the Guidelines/Reservation must be made at the 92nd session of the Legal Committee.

6 The basic argumentation for alternative solutions has not - or has not only - been that they have been better for passengers. The availability of such solutions in respect of terrorism related insurance as those outlined in document LEG 91/WP.3 have been questioned. There has, however, long since been statements available in the Correspondence Group that insurance solutions such as those outlined in document LEG 91/WP.3 would be found in the market.[10] And at the 91st session, one well reputed London firm of brokers expressed confidence in being able to arrange such terrorism related insurance as foreseen in document LEG 91/WP.3.[11] Albeit some brokers have indicated that they will not make further attempts to arrange such insurance, there are more statements of market availability of the insurance in respect of terrorism related claims than ever before in the history of the Legal Committee.

7 The London broker has confirmed they will submit insurance conditions to the Legal Committee for their consideration prior to LEG 92. However, there has never been a tradition in the Legal Committee to demand disclosure of what the commercial parties consider commercially sensitive details. (Also the P&I proposals do not disclose the exact premium, who the underwriters are, etc, although P&I has submitted that they could disclose this information.[12]) Now that the legal framework has been established, it can be predicted with confidence that the market will meet the needs at an affordable cost.

8 As regards the major part of the insurance that is expected to be arranged by the P&I Clubs, the Clubs have not committed themselves in this respect. The important point from the legislator's point of view in this connection is if the clubs would in principle be able to commit in

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4 The web site of the Correspondence Group is located at http://folk.uio.no/erikro/WWW/corrgr/index.html .

5 http://folk.uio.no/erikro/WWW/4-1.pdf. See also the clauses referred to in http://folk.uio.no/erikro/WWW/4-2.pdf

6 http://folk.uio.no/erikro/WWW/corrgr/insurance/WP.doc

7 http://folk.uio.no/erikro/WWW/corrgr/insurance/988.pdf

8 http://folk.uio.no/erikro/WWW/LEG%2091-12.pdf para 143.

9 http://folk.uio.no/erikro/WWW/corrgr/insurance/korrgrbrevMai05.pdf

10 http://folk.uio.no/erikro/WWW/corrgr/insurance/Norway26jul05.pdf

11 http://folk.uio.no/erikro/WWW/LEG%2091-12.pdf para 124.

12 See, e.g., http://folk.uio.no/erikro/WWW/corrgr/insurance/P&I15jun06.pdf and http://folk.uio.no/erikro/WWW/corrgr/insurance/P&I14jul06.pdf.

respect of existing ships. Their statement at the 91st session of the Legal Committee is unambiguously positive in this respect.[13]

9 At its 91st session, the majority in the Legal Committee was not "in favour of pursuing an option which would exclude shipowners from liability for acts of terrorism."[14] The attached Guidelines/Reservation therefore do not include a total or partial exclusion of carrier's liability. However, it does include an element of global limitation, in line with LEG 91/WP.3 and Article 19 of the Athens Convention.

Insurance

10 By Article 4bis of the Convention, the compulsory insurance cover is limited to SDR 250,000 per passenger and subject to a number of defences. The Reservation and Guidelines (see above, paragraph 2) will in addition make the insurance obligations subject to further exemptions. The Guidelines/Reservation presented here is based on the same outline as in LEG 91/WP.3.

11 There will be two elements in this cover, which will form the basis of the relevant authorities' decisions to issue insurance certificates under the Athens Convention. These two insurers verify their commitment to the Government by issuing a "Blue Card" or the like. The two elements are:

- Ordinary P&I insurance, which will cover most risks, but will exclude terrorism related risks and a few other extraordinary risks defined in the attached Guidelines.[15] This is referred to as **"compulsory non-war insurance."**
- The proposal for Guidelines/reservation in this paper is based on the assumption that commercial insurance will be available to cover what the ordinary P&I insurance does not cover, but only up to a limit of USD 500 million per incident. This insurance will be subject to certain exemption clauses and could be terminated on short notice.[16] This does, however, reflect the best that the market can offer today without undue disturbance to other shipping interests and taking cost into account. This insurance is referred to as **"compulsory war insurance"**. The war insurance market provides cover for a long established basket of risks to reflect the P&I war exclusions, albeit there is no liability for acts solely attributable to "war" in the Athens Convention.

12 In addition, shipowners regularly have other liability insurance in the war market, that is insurance covering terrorism related liabilities and other liabilities not covered by ordinary P&I insurance. Such insurance may be, wholly or partially, combined with war hull insurance or P&I insurance (without being mutualized and pooled, as ordinary P&I insurance). Such **"ordinary war insurance"** is subject to a number of exceptions, and is also in other aspects inapt to fulfill the compulsory insurance requirements of the Athens Convention.[17] The Legal Committee will need to be satisfied that any proposed insurance scheme addresses these gaps in coverage as well as providing for the facility for passenger claimants being able to take direct action against this insurance scheme.

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13 http://folk.uio.no/erikro/WWW/LEG%2091-12.pdf para 125.

14 http://folk.uio.no/erikro/WWW/LEG%2091-12.pdf para 143.

15 Annex I, paragraphs 2.1 and 2.3.

16 Annex I, paragraphs 2.1 and 2.2.

17 An incurrence of this type combined with a P&I insurance will often be subject to P&I Rules. Therefore, it would be illustrative to indicate which rules of a P&I Club would have to be amended in order that this type of insurance should comply with the requirements of the Athens Convention, 2002. Such indication can be found at http://folk.uio.no/erikro/WWW/corrgr/insurance/difference.doc . Generally, all policy defences, such as notice and unpaid premium, can be invoked against the passenger claimant. It is this kind of the insurance the P&I Clubs has proposed to use as the *only* insurance for terrorism related risks under the Athens Convention, 2002, see http://folk.uio.no/erikro/WWW/corrgr/insurance/P&I15jun06.pdf .

13 An overview of the different elements and exceptions in the proposed insurance system is set out in Annex II.

The Global limitation

14 Athens Convention Article 18 reads:

> "This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships."

This means that it would be fully in line with the Athens Convention to limit the carrier's total exposure to the limits of the 1996 Convention of Limitation of Shipowners Claims (LLMC).[18] This would, e.g., mean that a 500 passenger ship would have a maximum exposure of SDR 87.5 million. However, passenger claims would not be affected unless the sum would exceed this limit; e.g., if 350 passengers on a 500 passenger ship each claims SDR 250,000 (the maximum for strict liability). In this way, a global limit is better for the passenger than a reduced per capita limit.

15 As outlined in LEG 91/WP.3, it is suggested that a "part of the package" shall be that this global limit shall apply to claims under the war-risk insurance. This part is strictly speaking unnecessary in the sense that the other parts of the WP.3 package can stand without it.

16 In the LLMC 1996, there is an option to enhance limitation amounts. The draft reservation ensures that this option is not utilized in respect of terrorism related liabilities, so that this exposure remains insurable.[19]

Details

17 In addition to the above principals, some details that have been mentioned in the discussions deserve some comments:

- **Definition of terrorism end similar exceptions:** A wide definition is used, in line with insurance practice.[20]
- **Jurisdiction:** The insurance arrangements outlined here do not call for a replay of the discussions at the Diplomatic Conference about one contra several jurisdictions. If global limitation kicks in, the system of LLMC is so that one single jurisdiction shall determine limitation issues.[21] The guidelines provide that the same shall apply in case the overall limit of the compulsory war insurance kicks in.[22] In both cases, the procedure is left to national law.
- **Costs:** The increased demand for insurance caused by the Athens Convention may cause an increase in premiums for several kinds of insurance. The Legal Committee will be apprised of the expected additional costs ahead of its 92nd Session.
- **Focal point:** A company or other entity that can front the insurers of the compulsory war insurance have to be established or identified. Its structure remains subject to approval, but there are indications that an acceptable fronting company can be found or established.
- **Notice:** It has been suggested that there is a need for a detailed set of rules on the formalities of notice of the compulsory war insurance. The prospective compulsory war insurers, however, seem content without detailed formal rules for notice, and so do

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18 See http://folk.uio.no/erikro/WWW/LLMC-96.html Article 4, which modifies Article 7 of the 1976 LLMC. It is this global limit that is referred to in substance in Annex I, paragraph 1.4.

19 Annex I, paragraph 1.4.

20 Annex I, paragraph 2.2.

21 LLMC Article 11.

22 Annex I, paragraph 2.2.3.

prospective States Parties.. The important matter is that it is clear that they can discontinue their exposure if there is a substantial adverse shift in the market.[23]

- **Sustainability:** There is no reason to believe that the proposed insurance arrangements can not be maintained over a long period. However, if they are not, the Guidelines can be amended to meet the new market situation. The market situation may also change in a positive direction: As the market increases in size, it might be possible to negotiate higher limits or to remove the need for some of the exclusions that are proposed here from the insurance requirements of the Athens Conventions
- **Cooperation between insurers:** One or more memoranda of understanding would have to be agreed between the different insurers to ensure smooth operation of the scheme, just as in the oil pollution regimes, but this is not a matter for the Legal Committee.
- **States Parties without the Reservation:** In the unlikely event that a State wishes to ratify the Athens Convention without the Reservation, the Depositary should provide the necessary guidance.[24] In the even more unlikely event that the State chooses to ratify without the Reservation anyway, the insurance will not apply in that State Party due to an express exclusion clause.[25]

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18 Generally, much more detail has been discussed in connection with the insurance arrangements outlined here than is customary in the Legal Committee. Still, the task of the Legal Committee is only to create a framework for the commercial parties to detail. The discussions on details have however been useful in order to ensure that the framework that the Legal Committee is about to create is sound, and to provide a solid basis for the decision of a Sttae Party to approve or disapprove of the insurance arrangements provided in an application for an Insurance Certificate.

The future

19 The Legal Committee is invited to consider and adopt the annexed Guidelines at its 92nd session. The need for revision of the Guidelines should be considered biannually, and the Committee is invited to revert to this issue under agenda item 10. In particular, the limits of the compulsory war insurance should be monitored.

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23 Annex I, paragraph 2.2.1 and 2.2.2.

24 Annex I, paragraph 5.

25 See Annex I, paragraph 2.1.4. A clause to the effect that the convention should not enter into effect with states not having taken the reservation has been abolished at the suggestion of the Chairman of the Legal Committee.

ANNEX I
IMO GUIDELINES FOR IMPLEMENTATION OF THE ATHENS CONVENTION

1 The Athens Convention should be ratified with the following reservation clause or a reservation to the same effect:

"[1.1] **Reservation in connection with the ratification of the Government of ...the Athens Convention Relating to Carriage of Passengers and Their Luggage by Sea, 2002 ("the Convention").**

[1.2] The Government of ... reserves the right to issue insurance certificates under Article 4bis of the Convention with such exemptions, limitations and requirements as it finds that the insurance marked conditions at the time of issue of the certificate necessitate, and to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

[1.3] Such exemptions, limitations and requirements will be clearly reflected in the Certificate issued or certified under Article 4bis of the Convention, and adequate insurance will always be required.[26] The right retained by this reservation will be exercised with due regard to guidance by the Legal Committee of the International Maritime Organization with an aim to ensure uniformity.

[1.4] The Government of ... undertakes to utilize Article 19 of the Convention to limit liability for any loss suffered as a result of the death of or personal injury to a passenger resulting from an act of war, terrorism or related perils, or from an act relating to an act of war, terrorism or related perils, or action to prevent an act of war, terrorism or related perils to SDR 175,000 - multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate - until a proposal for enhancement of this limit first has been considered by the Legal Committee of the Organization.

[1.5] The Government of ... interprets Article 4bis of the Convention so that a provider of financial security cannot be held responsible under the Convention for liabilities for which it has not undertaken to be liable."

2 In the current state of the insurance market, States Parties should issue Insurance Certificates on the basis of one undertaking from an insurer covering war risks, and another insurer covering non-war risks. Each insurer should only be liable for its part. The following rules should apply (the clauses referred to are set out in Appendix A):

2.1 ***Both war and non-war insurance*** may be subject to the following clauses:

2.1.1 *Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause (Institute clause no. 370);*

2.1.2 *Institute Cyber Attack Exclusion Clause (Institute clause no. 380);* and

2.1.3 The defences and limitations of a provider of compulsory financial security under the Convention as modified by these Guidelines, as amended, in particular the limit of 250,000 units of account per passenger on each distinct occasion.

2.1.4 The proviso that the insurance only shall cover liabilities subject to the Convention as modified by these Guidelines, as amended.

2.1.5 The proviso that any amounts settled under the Convention shall serve to reduce the outstanding liability of the carrier and/or its insurer under Article 4bis of the Convention even if they are not paid by or claimed from the respective war or non-war insurers.

2.2 ***War insurance*** shall cover liability for damage caused by:

[26] The term "adequate insurance" is also used in Article 50 of the Convention for the Unification of Certain Rules for International Carriage By Air, 1999 (the Montreal Convention).

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- war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
- derelict mines torpedoes bombs or other derelict weapons of war, strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- any terrorist or any person acting maliciously or from a political motive
- confiscation and expropriation

and may be subject to the following exemptions, limitations and requirements:

2.2.1 *War Risks 7 Days Notice, Automatic Termination of Cove Clause*, on the conditions that:
- notice should be copied to the State Party that has issued the Insurance Certificate under the Convention
- notice under the clause shall not affect the compulsory insurance cover to the extent the insurance cover is continued under new terms, *e.g.*, an increased premium

2.2.2 30 days notice in cases not covered by 2.2.1

2.2.3 a limit of USD 500 million (about SDR 340 million) per ship per incident, always provided that:
- this amount should be equitably distributed amongst claimants
- this distribution may be made in one or more portions to claimants known at the time of the distribution
- the distribution may be made by the insurer, or by the Court or other competent authority seized by the insurer in any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance[27]

2.3 **Non-war insurance** should cover all risks subject to compulsory insurance other than those listed in 2.2, whether or not they are subject to exemptions, limitations or requirements in 2.2.1 to 2.2.3.

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3 An example of a set of insurance undertakings ("Blue Cards") and an insurance certificate, all reflecting these guidelines, is included in Appendix B.

4 A State Party should not issue certificates on another basis than set out in paragraph 2 unless the matter first has been considered by the Legal Committee of the Organization.

5 The Legal Committee encourages the Depositary of the Convention - if necessary - to make these Guidelines known to a State that is about to deposit an instrument of signature, ratification, acceptance, approval or accession.

[27] See to this "Cox and Bankside" problem the UK Law Commission's Consultation Paper http://www.scotlawcom.gov.uk/downloads/dp104_third_parties.pdf parts 7 and 15.

The clause would leave the distribution procedure to national law. The jurisdiction provision is similar to LLMC article 11, and can depart from Article 17 of the Convention because this is part of the guidelines allowed by the Reservation Clause. A decision on distribution of the insurance amount would be binding on other courts pursuant to Article 17bis.

ANNEX I, APPENDIX A
CLAUSES REFERRED TO

War Risks 7 Days Notice, Automatic Termination of Cover Clause

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1 Cancellation

Cover hereunder in respect of the risks of war, etc. may be cancelled by either the Underwriters or the Assured giving 7 days notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the Underwriters). The Underwriters agree however to reinstate cover subject to agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to new rate of premium and/or conditions and/or warranties.

2 Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder in respect of the risks of war, etc. shall TERMINATE AUTOMATICALLY

2.1 upon the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

2.2 in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use.

3 Five Powers War

This insurance excludes

3.1 loss damage liability or expense arising from

- the outbreak of war (whether there be a declaration of war or not) between any of the following:

  United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

- requisition either for title or use.

Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Exclusion Clause (Cl. 370, 10/11/2003)

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1 In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.

1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

Institute Cyber Attack Exclusion Clause (Cl. 380, 10/11/03)

1 Subject only to clause 10.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 10.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

ANNEX I, APPENDIX C
EXAMPLE BLUE CARDS AND INSURANCE CERTIFICATE

[Example of]
Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4bis of the Athens Convention Relating to Carriage of Passengers and Their Luggage by Sea, 2002.

Name of Ship:
IMO Ship Identification Number:
Port of registry:
Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4bis of the Athens Convention Relating to Carriage of Passengers and Their Luggage by Sea, 2002, ***subject to all exceptions and limitations allowed for compulsory war insurance under the Convention and the Implementation Guidelines adopted by the Legal Committee of the International Maritime Organization in October, 2006, including in particular the following clauses: [Here the text of the Convention and the Guidelines with appendices can be inserted to the extent desirable]***

Period if insurance from: 20 February 2007
to: 20 February 2008

Provided always that the Insurer may cancel this Certificate by giving ~~three months~~ 30 days written notice to the above Authority whereupon the liability of the Insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

War Risks, Inc.
[Address]

.....
Signature of insurer

As agent only for ***War Risks, Inc.***

***

[Example of]
Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4bis of the Athens Convention Relating to Carriage of Passengers and Their Luggage by Sea, 2002.

Name of Ship:
IMO Ship Identification Number:
Port of registry:
Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4bis of the Athens Convention Relating to Carriage of Passengers and Their Luggage by Sea, 2002, ***subject to all exceptions and limitations allowed for non-war insurers under the Convention and the Implementation Guidelines adopted by the Legal Committee of the International Maritime Organization in October, 2006, including in particular the following clauses: [Here the text of the Convention and the Guidelines with appendices can be inserted to the extent desirable].***

Period if insurance from: 20 February 2007
to: 20 February 2008

Provided always that the Insurer may cancel this Certificate by giving three months written notice to the above Authority whereupon the liability of the Insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by: ***PANDI P&I***
[Address]

..... As agent only for ***PANDI P&I***
Signature of insurer

***

[Example of]

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY

IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to

the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage.

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security.....

Duration of Security .....

Name and address of the insurer(s) and/or guarantor(s)

The insurance cover hereby certified is split in one war insurance part and one non-war insurance part, pursuant to the Implementation Guidelines adopted by the Legal Committee of the International Maritime Organization in October, 2006. Each of these parts of the insurance cover is subject to all exceptions and limitations allowed under the Convention and the Implementation Guidelines. The insurers are *not* jointly and severally liable. The insurers are:

For war risks: War Risks, Inc., [address]
For non-war risks: Pandi P&I, [address]

This certificate is valid until .....
Issued or certified by the Government of .....

(Full designation of the State)
OR
The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of .....
(full designation of the State) by ..... (name of institution or organization)

At ..... On .....
(Place) (Date)

.....
(Signature and Title of issuing or certifying official)

Explanatory Notes [from the Convention]:

1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.

2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3 If security is furnished in several forms, these should be enumerated.

4 The entry "Duration of Security" must stipulate the date on which such security takes effect.

5 The entry “Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

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ANNEX II
Overview of the insurance cover

Risk	**Insurance to back certificate ("Blue Card")**	**Reinsurance and other backing of insurance**
Damage caused by - Radioactive Contamination - Chemical, Biological, Bio-chemical and Electromagnetic Weapons - Cyber Attack (computer warfare) (*"excluded risks"*)	None	Not available - that is why one cannot require compulsory insurance for these risks
The following risks, in so far they are subject to liability and compulsory insurance under the Convention (*"war risks"*): - war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power - capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat - derelict mines torpedoes bombs or other derelict weapons of war, strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions - acts of any terrorist or any person acting maliciously or from a political motive - confiscation and expropriation	Special insurance subject to short notice and a USD 500 mill overall limit	1) Recourse against the carrier's ordinary war liability insurers (which can be free-standing, combined with war hull insurance and/or purchased as a part of the non-war P&I package). The carrier's ordinary war insurance is subject to policy defences that make it unapt to back the compulsory insurance certificate alone. 2) Gap-filling (re)insurance in the war market
All other risks subject to compulsory insurance under the Convention (*"non war risks"*)	P&I insurance certificate excluding war risks and excluded risks	A sophisticated system of pooling and reinsurance in the non-war market

It is the view of the sponsor of this paper that the ideal solution would have been that P&I had issued a certificate for all risks where insurance were required under the Convention, like under CLC. However, it is accepted that the P&I insurance under the Athens Convention cannot be extended to risks that are reinsured in the war insurance market, typically terrorism related claims. Hence, the distinction between war risks and non war risks in the first column.

Even in the war risk insurance market there are some risks that cannot be insured, at least anywhere near the amounts required under the Athens Convention. These are the excluded risks in the first column. The sponsor of this paper believes that although these risks ideally should be insured, attempts to arrange insurance for these risks should not be allowed to hold up the entry into force of the Convention. And until now, it is not known that any passenger has had a claim that would have been subject to these exceptions.

After this, a Government or other authorized body may issue an insurance certificate on the basis of an undertaking (a “Blue Card”) from a war risk insurer and a non war risk insurer (P&I); see the second column. However, each of these insurers needs to be backed, as they cannot bear the risk alone (see the third column).

The P&I clubs are backed by a sophisticated pooling and reinsurance system, which shall not be explained in details here. This backing is usually subject to certain exceptions. If and when the clubs agree to issue Blue Cards, they will waive these exceptions.

The war insurer is backed by (re)insurance in the war market. The main part of this insurance is the war insurance every shipowner has. This insurance has a number of gaps, such as defences of the carrier’s non-disclosure of material facts, it has no direct action and the passengers must share the insurance amount with other claimants. Therefore, an additional gap-filling policy must be taken out to cover these gaps.