

ATHENS CONVENTION and TERRORISM

Frequently Asked Questions (FAQs)

The Secretariat of the International Group of P&I Clubs visited Brussels recently in order to explain some of the difficulties that insurers were facing in relation to the planned implementation of the Athens Convention 2002, particularly in relation to cover in respect of liability arising out of terrorist incidents. In preparation for the co-ordination meeting of States which is due to take place in advance of the meeting of the Assembly of IMO in November, it was thought that it might be helpful to set out as simply as possible some of the factors affecting these issues. The following questions and answers are designed to elucidate matters.

It should be noted that the International Group Clubs do not underwrite war risks or terrorist risks. The information supplied below has therefore been provided on the basis of responses obtained to enquiries made in the specialist market which provides cover for these risks.

1. ***Q: Do P&I Clubs cover terrorism risks as part of their standard cover?***

A: No. War risks and terrorism are excluded.

2. ***Q: Do shipowners have cover for terrorism?***

A: Yes. Shipowners take out separate insurance cover for war risks which includes terrorist acts. This insurance covers the shipowner for both his property (that is, for the value of the ship) and his liability to third parties (including P&I risks such as passenger liabilities). These property and liability covers are often referred to as Hull War Risks and P&I War Risks. The property cover will be linked to the value of the vessel. The liability cover will be subject to a financial limit which is commonly the amount for which the vessel is insured.

3. ***Q: Who provides cover for war risks?***

A: P&I War Risks cover is usually taken out by the shipowner as part of his Hull War Risk insurance. This cover is provided by specialist war risks underwriters and is limited to the insured value of the vessel. Alternatively some shipowners are able to obtain cover through a War Risks Club.

4. Q: What are War Risks Clubs?

A: The War Risk Clubs and War Risk Pools were set up as national insurers in time of war with government backing. In practice the cover they provide today is similar to that provided by the War Risks market (see Question 3 above). War Risks Clubs are mutual and entry is often restricted by shipowners' nationality and/or the flag of the vessel. The first layer of War Risks cover is therefore sometimes placed with a War Risk Club instead of with the commercial War Risk market. The liability cover provided by the War Risks Clubs may be for an amount which is not linked to the value of the vessel.

5. Q: Is supplementary cover available?

A. Yes. Some years ago, the P&I Clubs arranged through the International Group a second layer of War Risk cover. This cover is purchased by Clubs on behalf of their members and currently stands at US\$500 million in excess of the amount recoverable from the underlying policy which the member has in the commercial war risks market or with his War Risks Club. It is excess cover which only applies once all other cover has been exhausted. The Clubs fully reinsure the risk with specialist war risks underwriters.

6 Q: Do the terms of war risks cover differ from the standard P&I cover?

A: Yes. Because of the special nature of the risk, war risks cover is subject to cancellation on seven days notice. There is also an automatic cancellation of cover in the event of a war between the major powers.

7. Q: Can any assurance be given that cover at the present levels be maintained for the foreseeable future?

A: No. The availability of cover can be subject to considerable fluctuation. As well as the general effect on the insurance market of occurrences such as Hurricane Katrina, the specialist war risks market is particularly sensitive to factors such as political unrest and terrorist activity. Any reduction in capacity will first affect cover at the higher levels.

The entire world's marine war risk market can be characterized by high exposure and a relatively low overall level of premium in times of peace and when the industry is unaffected by terrorism. The very high values of for example passenger ships could mean that the total premium income over many years could be exhausted by only one incident. This could have dramatic consequences for the capacity in the market in a very short timeframe

8 ***Q: Can war risks cover be used as a basis for insurers to issue the Certificates required under the Athens Convention?***

A: The level of cover will not be sufficient to cover the liability for larger passenger ships. The notice provisions are not compatible with the annual certificates required under the Convention. Clarification would also be required as to which insurer is to issue the certificate when part of the cover (terrorism) is placed in two or more layers with two or more different insurers. Further, the commercial war risk underwriters and war risks clubs do not always follow the P&I policy year (which starts on 20 February each year) or the calendar year.

9. ***Q: Can the substantive effect of the Convention be modified by reservation to protect the insurer from liability for terrorism?***

A: Yes. Provided **all** parties to the Convention make a reservation in identical terms, it is possible for the substantive effect of the Convention to be amended so that, for example, the insurer's liability in respect of terrorism can be excluded.

10. ***Q: Do the P&I Clubs agree the wording of the reservation which has been proposed in the IMO Correspondence?***

A: No. Insurers are advised that at least under English law a court would hold the insurer liable according to the liability provisions in the body of the Convention and would pay limited regard to the qualifications contained only in the certificate.

11 ***Q: Have insurers made any alternative proposals?***

A: Yes. The International Group submitted wording to the Correspondence Group in the summer of 2005 for a reservation which is intended to modify the provisions on insurers' liability in the body of the Convention rather than just the Certificate.

12 ***Q: Is the insurance industry proposing that there should be no insurance for the risks when the insurers' liability is excluded by a reservation?***

A: No. Even if the Convention did not provide for compulsory insurance, each shipowner would continue to purchase whatever war risk/terrorism cover is available since to do otherwise would imperil the future of his company. It will also be a requirement of any bank or lender involved in financing the vessel. Claims would not be subject to the full compulsory insurance provisions of the Convention. However, the shipowner would still have insurance on the usual war risks terms to meet such liabilities as may arise for terrorist incidents.

13. ***Q: If insurers' liability was excluded under the Convention, would this have the effect that passengers would be unable to recover while other third party claimants could recover?***

A: No. When war risks cover is available it would apply equally to both passenger claims and other third party claims.

- 14 ***Q: Can the extent of War Risks cover offered to the shipowner be increased by utilizing both the market cover and the War Risks Club cover before accessing the excess War Risks P&I cover which is purchased by the P&I Clubs?***

A: Shipowners have their war risks cover for both property and liability either as part of their Hull War Risks insurance or through their membership of a War Risks Club. The responses given to enquiries made by the International Group cast doubt on the feasibility of a solution combining both sources of cover. Further, even if possible, the following factors would be relevant:

- (i) Combining cover would only be a possibility for those shipowners who are eligible to join War Risks Clubs (see Question 4);
- (ii) Shipowners only need to insure the value of the hull once. It is possible that some shipowners who have their primary cover with a War Risks Club would be able to arrange additional liability cover with a marine war risks insurer.
- (iii) If such a solution was possible, it would have an effect on capacity of the specialist war risk market. It could reduce the level of the International Group's present cover of US\$ 500 million. The reduction in capacity would affect all shipowners, not just the operators of passenger vessels.
- (iv) Such a solution would probably not produce cover at a level high enough to meet the requirements of the Athens Convention for larger ships.
- (v) The high levels of cover which are required under such a solution are the most susceptible if there is a reduction in the capacity of the market (see Question 7).

- 15 ***Q: What is the bio-chem exclusion?***

A: This is an exclusion for risks related to the use of chemical, biological, bio-chemical or electro-magnetic weapons. This exclusion has become standard in reinsurance policies in recent years and war risks policies are subject to this exclusion.

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