

INTERNATIONAL GROUP OF P&I CLUBS

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Dear Erik,

Athens Convention

Thank you for sending us copy of your letter of 20th May.

We have only two broad comments on your helpful analysis: first, although we do not share your optimism in relation to the prospects of obtaining satisfactory cover in relation to the non-intentional damage resulting from the operation of the bio-chem exclusion, we are prepared to consider the matter further with our reinsurers and will let you have a response in due course. Present indications are however that reinsurers will be unwilling to change their position for the 2005 policy year and that the Clubs will therefore have to insert exclusions to this effect from the cover that they are able to offer in the next policy year.

Second, as to the possible ways forward we again do not share your optimism with regard to Options A,B,D and E, however we believe that Option C may work. You envisage that IMO could provide suitable declaratory language that would, for example, establish that ISPS certification would be conclusive evidence that the incident giving rise to the claim was wholly caused by an act of terrorism. We should stress that it is important that certification should be regarded as conclusive – if the shipowner is further required to show that he is in all respects ISPS compliant at the time of the incident then the situation will not have been improved at all. If IMO was prepared to agree suitable declaratory language on this basis this language could then be adopted by States in implementing the Athens Protocol and would be mirrored in the Clubs' policy conditions. However it is obviously crucial to know whether States feel able to bind themselves to an interpretation of this sort. It is equally important for shipowners and Clubs to be confident that effect will be given to this amendment in the courts of all States which are party to the Protocol. So far as we are aware the only precedent within IMO is much weaker in effect. It is

important therefore to know States' views in this respect and we hope that preliminary views can be expressed on this issue within the correspondence group.

However, we would suggest that the mechanism suggested in relation to Option C could possibly be used to better effect by using suitable declaratory language to clarify that 'act of terrorism' is included within the definition of act of war. It is suggested that the same policy considerations should apply in relation to acts of terrorism as apply in relation to acts of war. If this policy objective can be achieved by the comparatively simple technique suggested in relation to Option C then the Correspondence group may be able to provide a more comprehensive solution than originally envisaged. The alternative may be to re-open the Protocol on this point - although States may have little appetite for full-scale amendment so soon after the adoption of the Protocol this would allow the issue to be addressed in detail.

We have not dealt in any detail with your other options but confirm that we are prepared to do so if any of your correspondents show an interest in developing these further.

We look forward to receiving the comments of others and confirm that we stand ready to assist in the further work of the Correspondence Group.

Yours sincerely,

Lloyd Watkins