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Dear Erik

Athens Convention - War Risk Issue

Thank you for your letter of 20 May regarding the issues relating to the insurance provisions of the Athens Convention 2002. This letter focuses only on the war risk issue.

The UK has noted the 5 possible options that you have listed in paragraph 21 of your letter, and the further comments provided by Graham Barnes, Marsh and ICS. We also note that this issue arises in respect of the Civil Liability, HNS and Bunkers Conventions, and for this reason alone it would seem inappropriate to re-negotiate these instruments along with the 2002 Athens Convention to resolve the issue.

The UK's initial view is that option C in your letter provides the most appropriate basis on which to progress this matter, namely a clarification of the existing defences contained in Article 3 of the Convention. Delegations involved in the development of the draft Wreck Removal Convention may recall that the UK, with Cyprus, sought to develop new text to tie the shipowner's defence under that instrument with the ship's security arrangements. The intention of the proposed wording was to exclude the registered owner from liability under the Convention where he had complied with security arrangements agreed by the IMO.

This proposal has since been deleted, on the understanding that the Committee would revert to it at a later stage after study of the problem in the wider context.

We agree with the comment made by the ICS that any clarification should ensure that the carrier is excluded from liability if they have fulfilled their obligations regardless of whether ports or other parties have complied. This was the intention of the initial wording that we provided for inclusion in Article 11 of the draft Wreck Removal Convention, although industry representatives did not express support for this text.

This would, therefore, not entail the interpretation of Article 3 (1) (a) so as to include "act of terrorism" giving the carrier a general exemption from liability in all such cases, but only in the event that the carrier has complied with the international rules to prevent terrorism.

We also agree that Article 31 of the Vienna Convention on the Law of Treaties provides that the Convention can be interpreted in the manner that you have outlined in Option C,

which may need to take the form of an "agreement" between State parties, as referred to in Article 31 (3) (a) of the Vienna Convention. This could take the form of an IMO Assembly Resolution, provided that it is clear that all State Parties to the Athens Convention agree to the terms of the resolution and agree that the resolution is an authoritative interpretation of Article 3(1) of the Convention.

This will provide an obligation on States by virtue of Article 31 to take into account, when interpreting the Convention, the terms, context, object and purpose of the Convention and any subsequent agreement i.e. any IMO Assembly Resolution. Nonetheless, it should be borne in mind that such a Resolution can only be agreed and adopted at the next IMO Assembly in November 2005.

The UK also agrees that a further assurance would be for States to include a defence along the lines agreed in any interpretation in their implementing legislation. However, it should be noted that this may not be possible in accordance with States existing implementing legislation, and taking into account that there are already 5 State parties to the Bunkers Convention, and also the HNS Convention.

I hope this is helpful.

Regards,

David Baker