

## International Chamber of Shipping

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Professor Erik Røsæg  
University of Oslo

Dear Erik

### ATHENS CONVENTION

Thank you for your letter of 5 July.

As regards the **terrorism** issue, we would like to make it quite clear that in our letter of 22 June we were not suggesting that the text of the Convention could be changed by IMO resolution or otherwise. What we have suggested is a clarification of Article 3(1)(a) using the same mechanism that you have suggested could be used to clarify Article 3(1)(b) in your Option C. Our proposal, as contained in our earlier letter, is that IMO should clarify that the phrase “act of war, hostilities, etc.” in Article 3(1)(a) includes “act of terrorism”.

As the International Group has pointed out, the war risk exception in most modern Conventions is probably based on the terms of hull and cargo insurance policies that were in use when the Conventions were drafted. The 1969 CLC war risk exception is virtually identical to Article 3(1)(a) of the 2002 Athens Convention, yet the terms of hull and cargo insurance policies have changed over the years, particularly following 9/11 when acts of terrorism were excluded.

Moreover, and as stated in our earlier letter, it is increasingly difficult to distinguish between war, hostilities and terrorism today. There have been developments since the Protocol was adopted in 2002 that underscore this point and would in our view justify clarification of Article 3(1)(a) in the manner that we have suggested. One such development is the treatment of the terrorist threat by international bodies. Earlier this year, acting under Chapter VII of the Charter of the United Nations (“action with respect to threats to the peace, breaches of the peace, and acts of aggression”), the UN Security Council adopted Resolution 1540 which is aimed inter alia at prevention of proliferation of nuclear, chemical and biological weapons for terrorist purposes. This indicates that governmental policy today, as reflected in the decisions of international bodies, is clearly to put the terrorist threat on the same level as war and other hostilities. Such political thinking would suggest that liabilities for damage caused by terrorists should be treated in the same way as liabilities for damage caused by war and other hostilities.

The Swedish Ministry of Justice in their letters of 2 and 11 July invited us to comment on Options A and B of your letter of 20 May. We have little to add to the comments of the International Group in their recent letter which we fully support. As regards Option B we would only add that the financial response to shipowners' liabilities is already provided through a world-wide pool, namely the P&I Club system and the International Group, which means pooling the risks between the shipowners themselves. But any pooling system is only workable if reinsurance is available and this is not the case with liability for acts of terrorism.

As regards the **amount** issue, our members are very concerned about this problem and we welcome your constructive suggestion to use the global limit of the 1996 LLMC Convention. We look forward to hearing the views of others, particularly States.

Kind regards  
Yours sincerely

Linda Howlett  
General Manager (Legal)