

LEGAL COMMITTEE
101st session
Agenda item 8

LEG 101/8/3
12 March 2014
Original: ENGLISH

**REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS
EMANATING FROM THE LEGAL COMMITTEE**

IMO Reservation and Guidelines for Implementation of the Athens Convention

**Submitted by the International Group of P&I Associations, the International Chamber
of Shipping and the Cruise Lines International Association**

SUMMARY

Executive summary: This document draws the Legal Committee's attention to the insurance ramifications for vessels registered in States who have ratified, or will ratify, the 2002 Protocol but have not deposited the 2006 Reservation

Strategic direction: 2

High-level action: 2.0.1

Planned output: 2.0.1.5

Action to be taken: Paragraph 8

Related documents: LEG 101/8; LEG 101/8/1; LEG 92/WP.5; LEG92/13, LEG 99/10/1; Resolution A.988(24); Circular letter No.2758 and Corr.1

Introduction

1 This document is submitted in accordance with paragraph 6.6.5 of the Guidelines on the organization and method of work of the Legal Committee.

2 At its ninety-second session in October 2006, the Legal Committee agreed to the solution presented by the Governments of Norway and the United Kingdom to the question of liability and insurance cover for damage caused by an act of terrorism in the context of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (2002 Athens Protocol). The Committee agreed that a solution was needed in order to facilitate the entry into force of the Convention, provide legal certainty and uniform application of the rules on insurance as between States Parties. The 2002 Protocol will enter into force on 23 April 2014 for all 17 contracting States. To date, 11 States for whom the Protocol will enter into force have deposited the 2006 Reservation.

IMO Reservation and Guidelines for Implementation of the Athens Convention

3 At its ninety-second session, the Legal Committee adopted the IMO Reservation and Guidelines which recommended that States which ratify the 2002 Protocol should include the reservation in order to facilitate its entry into force. The IMO Reservation and Guidelines are contained in Circular letter No. 2758, which is attached as annex 1. Assembly resolution A.988(24), attached as annex 2, was subsequently adopted, recommending ratification of the 2002 Protocol with the reservation stipulating that States Parties will reserve the right to issue and accept certificates issued by other States Parties with such special exceptions and limitations in relation to war risks as the insurance market conditions at the time of issue of the certificate may necessitate.

4 The 2006 Reservation will ensure that owners of passenger ships engaged in international voyages will be able to obtain insurance cover as required by Article 4*bis* of the 2002 Protocol in accordance with existing market conditions. Without such reservation, it is unclear how States Parties will be able to issue State certificates and how, if at all, they will be able to give effect to the insurance provisions contained in the Protocol. If ships affected by the 2002 Protocol cannot obtain State certificates they may not be able to trade internationally to other States Parties without the risk of detention. Furthermore, failure to ratify the 2002 Protocol with the 2006 Reservation will lead to a lack of uniformity between States Parties. A ship registered in a State Party to the 2002 Protocol which has applied the reservation will obtain a State certificate in accordance with the relevant provisions and will legitimately apply the limited liability and insurance provisions, but such a ship could be detained by a State Party which has ratified the 2002 Protocol without the reservation.

5 Document LEG 99/10/1, jointly submitted by Belgium, Denmark, Greece, Italy, the Netherlands, Norway, Poland, Sweden and the United Kingdom, reminded and encouraged States to deposit the reservation when ratifying the 2002 Athens Protocol so that the insurance requirements in respect of terrorism-related risks will be consistent with the terms of the 2006 IMO Reservation and Guidelines. Document LEG 99/10/1 noted that the seven contracting States which had ratified the 2002 Athens Protocol at that time had done so without depositing the reservation. Of the current 17 contracting States, 6 States have not deposited the 2006 Reservation.

6 The co-sponsors of this document note that the reservation was developed and agreed with the express intention of facilitating entry into force of the 2002 Protocol, and that a State that deposits its instrument of ratification without the reservation could result in the unintended consequence of preventing passenger ship operators on their ship register from obtaining the necessary certification to trade. Such a consequence was clearly outlined in paragraph 7 of document LEG 99/10/1 which, given the material importance of making the reservation, is repeated as follows:

"Given the restricted nature of the non-war risk and war risks (including the terrorism risks), blue cards that are prescribed and contained in the Guidelines, and given that standard P&I cover does not meet in full the compulsory insurance requirements of Article 4*bis* of the Convention (hence the need for the Reservation and Guidelines), a possible consequence of States not making the reservation when depositing their instrument of accession is that the providers of standard P&I cover may be unable to issue blue cards to vessels on the registry of such States that would then be required under Article 4*bis*. This is on the basis that the implementing legislation in the State concerned may expose the P&I provider to claims that would fall outside the scope of cover."

7 States are urged to include the 2006 Reservation when depositing their instruments of ratification to the 2002 Athens Protocol, which will ensure its uniform application and allow passenger ship operators to obtain the necessary insurance cover and certification to trade. States that have already ratified without depositing a reservation are urged to deposit the reservation as a matter of priority in order to avoid the above-mentioned consequences.

Action requested of the Legal Committee

8 The Legal Committee is invited to acknowledge the information provided in this document and to comment and decide as it deems necessary.

ANNEX 1

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IMO

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Ref. A1/P/5.01
20 November 2006

Circular letter No.2758

To: All IMO Member States
United Nations and specialized agencies
Intergovernmental organizations
Non-governmental organizations in consultative status
Liberation movements

Subject: **Guidelines for the implementation of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002**

The Legal Committee, at its ninety-second session in October 2006, adopted guidelines for the implementation of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The guidelines recommend that States which ratify, approve or accede to the 2002 Protocol to the 1974 Athens Convention (the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002) should include a reservation or declaration to the same effect concerning a limitation of liability for carriers and a limitation for compulsory insurance for acts of terrorism, taking into account the current state of the insurance market. The guidelines provide wording for the recommended reservation.

Member Governments are invited to take these Guidelines into account when considering ratification, approval or accession to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

* * *

ANNEX

**IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION OF THE ATHENS
CONVENTION**

Reservation

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

“[1.1] *Reservation in connection with the ratification by the Government of ... of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (“the Convention”)*

Limitation of liability of carriers, etc.

[1.2] The Government of ... reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, if any, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

- 250,000 units of account in respect of each passenger on each distinct occasion;

or

- 340 million units of account overall per ship on each distinct occasion.

[1.3] Furthermore, the Government of ... reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.

[1.4] The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

[1.5] The reservation and undertaking in paragraph 1.2 will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

Compulsory insurance and limitation of liability of insurers

[1.6] The Government of ... reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4*bis* to maintain insurance or other

financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

- 250,000 units of account in respect of each passenger on each distinct occasion;

or

- 340 million units of account overall per ship on each distinct occasion.

[1.7] The Government of ... reserves the right to and undertakes to limit the liability of the insurer or other person providing financial security under paragraph 10 of Article 4*bis*, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of this reservation.

[1.8] The Government of ... also reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

[1.9] The Government of ... reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4*bis* from any liability for which he has not undertaken to be liable.

Certification

[1.10] The Government of ... reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4*bis* of the Convention so as:

- to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9; and
- to include such other limitations, requirements and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.

[1.11] The Government of ... reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

[1.12] All such limitations, requirements and exemptions will be clearly reflected in the Certificate issued or certified under paragraph 2 of Article 4*bis* of the Convention.

Relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention

[1.13] The rights retained by this reservation will be exercised with due regard to the IMO Guidelines for Implementation of the Athens Convention, or to any amendments thereto, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for Implementation of the Athens Convention, including the limits, has been approved by the Legal Committee of the International Maritime Organization, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.”

Guidelines

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);

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

2.1.4 The proviso that the insurance shall only cover liabilities subject to the Convention as modified by these guidelines; and

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 4*bis* 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, if any, for the loss suffered as a result of death or personal injury to a passenger caused by:

- war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, 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;
- act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk;
- confiscation and expropriation;

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

2.2.1 *War Automatic Termination and Exclusion Clause*

2.2.2 In the event the claims of individual passengers exceed in the aggregate the sum of 340 million units of account overall per ship on any distinct occasion, the carrier shall be entitled to invoke limitation of his liability in the amount of 340 million units of account, always provided that:

- this amount should be distributed amongst claimants in proportion to their established claims;
- the distribution of this amount may be made in one or more portions to claimants known at the time of the distribution; and
- the distribution of this amount 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.

2.2.3 30 days notice clause in cases not covered by 2.2.1

2.3 Non-war insurance should cover all perils subject to compulsory insurance other than those risks listed in 2.2, whether or not they are subject to exemptions, limitations or requirements in 2.1 and 2.2.

- 3 An example of a set of insurance undertakings (Blue Cards) and an insurance certificate, all reflecting these guidelines, are 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 International Maritime 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.

* * *

APPENDIX A

Insurance clauses referred to in guidelines 2.1.1, 2.1.2 and 2.2.1

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 ionizing 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.

War Automatic Termination and Exclusion

1.1 Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY

1.1.1 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;

1.1.2 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.

1.2 Five Powers War

This insurance excludes

1.2.1 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; and

1.2.2 requisition either for title or use.

* * *

APPENDIX B

I. Examples of insurance undertakings (Blue Cards) referred to in guideline 3

Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to article 4bis of the Athens Convention relating to the 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 the 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 of insurance from: 20 February 2007
to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving 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]

.....
Inc.
Signature of insurer

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

* * *

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to article 4bis of the Athens Convention relating to the 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 the 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 of 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]

.....
Signature of insurer

As agent only for ***PANDI P&I***

* * *

II. Model of certificate of insurance referred to in guideline 3

**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:

- 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.

ANNEX 2

INTERNATIONAL MARITIME ORGANIZATION



IMO

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ASSEMBLY
24th session
Agenda item 10

A 24/Res.988
9 February 2006
Original: ENGLISH

Resolution A.988(24)

**Adopted on 1 December 2005
(Agenda item 10)**

**PROTOCOL OF 2002 TO THE ATHENS CONVENTION: RESERVATION CONCERNING
THE ISSUE AND ACCEPTANCE OF INSURANCE CERTIFICATES WITH
SPECIAL EXCEPTIONS AND LIMITATIONS**

THE ASSEMBLY,

RECALLING the adoption of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (hereinafter referred to as "the Athens Protocol"),

BEING AWARE that the Athens Protocol is intended to provide a viable and effective compensation system,

CONSCIOUS of the need to ensure the early entry into force of the Athens Protocol,

ACKNOWLEDGING that the Athens Protocol contains provisions which exclude liability resulting from an act of war and other specified events or any incident wholly caused by an intentional act or omission by a third party, but that not all acts of terrorism are excluded by those provisions,

RECOGNIZING that insurance cover for liabilities in relation to death and personal injury arising from terrorism or other special risks is currently either limited or unavailable,

RECOGNIZING ALSO that the continuing threat of terrorism has had a negative impact on the insurance market,

NOTING that, as a consequence, carriers, as defined in the Athens Protocol, may be unable to obtain the Certificate of Financial Security currently required by the Athens Protocol,

1. RECOMMENDS that States ratify the Athens Protocol as soon as possible with the reservation that they reserve the right to issue and accept insurance certificates with such special exceptions and limitations as the insurance market conditions at the time of issue of the certificate may necessitate, examples being the biochemical clause and terrorism-related clauses;
2. ACCEPTS that these arrangements will be applied in a uniform manner in accordance with guidance developed by the Legal Committee of the Organization as a matter of urgency;
3. REQUESTS the Legal Committee to keep this resolution under review and report to the Assembly as appropriate.
