

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 3 - SEPTEMBER / DECEMBER 2006

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NEWS FROM THE CMI

**MINUTES OF THE EXECUTIVE COUNCIL MEETING
HELD BY E-MAIL DURING THE WEEK OF NOVEMBER 27, 2006,
CHAIRD BY THE PRESIDENT FROM HIS OFFICES IN PARIS AND FROM
THE CMI HEADQUARTERS IN ANTWERP ON THE LAST DAY OF THE MEETING**

Participating:

<i>President:</i>	Jean-Serge ROHART
<i>Past President</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Stuart HETHERINGTON
<i>Councillors:</i>	Jose Maria ALCANTARA Chistopher DAVIS Johanne GAUTHIER José Tomás GUZMAN John HARE (did not participate) Sergej LEBEDEV (did not participate) Henry LI Gregory TIMAGENIS
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS

Introduction by President Jean-Serge Robart

The President opened the meeting by welcoming those councillors who would be participating in the e-mail conference. He said that although nothing can replace the immediacy of a physical meeting where the members of the Executive Council can openly discuss all the topics, an e-mail conference had its main benefit of substantially reducing costs of attendance. He then explained the procedure to be followed for the meeting.

1. Minutes and matters arising

(a) The minutes of the Executive Council Meetings held at Cape Town on February 12, 13 and 15, 2006 were approved.

(b) Matters arising

The President then reported on his activities since the Assembly at Cape Town on February 15, 2006.

2. Finances

(a) The Treasurer then gave an interim report on the finances of the CMI. He then said that this is a safe position to be in.

Patrick Griggs then commented that it would be appropriate for the total cash position to be reduced. He also suggested that at the next Executive Council meeting additional ways of cutting down on operating expenses should be explored.

The Treasurer then commented that it might be appropriate to obtain professional assistance in determining an investment strategy for surplus funds built up over the last five years.

The President concluded the discussion by stating that the Executive Council should, at the next meeting, consider a better use of its funds to improve the CMI's relationship with the national MLA's and an alternative method of assessment of the level of subscriptions. These considerations would be put on the agenda for the next meeting.

(b) Unpaid Contributions

Mr. Gombrii reported on outstanding contributions from Member Associations.

3. Member issues

(a) Starter Kit for New Members

Ms. Gauthier said that she needed more input from Councillors on the draft starter kit or the draft guidelines on best practices if it was decided to revive dormant national associations. She further suggested that Councillors decide on the best way to assist new members and reinvigorate

those older associations that needed assistance to become full and productive members of the CMI. Mr. Timagenis moved to finish the starter kit based upon views of Councillors and the Executive Council and then consider them one last time before circulating them to national MLA's for comments and then table them at the Athens Conference 2008 for final discussion and adoption. The motion was adopted and Ms. Gauthier and Mr. Timagenis were invited to complete the starter kit and consider ways and means of better education of new members in their role within the CMI and their responsibilities therein, in cooperation with Mr. Frawley and a questionnaire being considered to establish an inventory of the CMI's membership.

(b) Monitoring of National Associations.

Mr. Gombrii moved for the approval by the Executive Council of an agreement with the Panamanian MLA on their outstanding subscriptions. The motion was seconded and adopted. Mr. Gombrii then said that he was corresponding with the newly formed Estonian MLA with a view to their membership.

4. Contributions

(a) There was then a general discussion on another formula for members' contributions. Arising from this discussion, Mr. Frawley moved that an inventory of the CMI's membership be obtained by way of a questionnaire as this would assist in considering whether the CMI is serving its membership as well as could reasonably be expected, and whether members can be assisted in being better organized, feeling to be more a part of the CMI and participate more in the decision-making process. The motion was adopted and Mr. Frawley was invited to prepare such a questionnaire and following approval, arrange distribution no later than mid February 2007 with replies requested for mid April so that they could be discussed at the next Executive Council meeting.

(b) Titulary Members' Contributions

There was a general discussion on this and it was decided to explore the matter further at the next Executive Council meeting.

5. Constitution

Mr. Goemans then reported on a number of housekeeping amendments that were required to the Constitution. Following discussion, it was agreed that the amendments would be decided upon at the next Executive Council meeting and referred to the next Assembly.

6. *CMI Charitable Trust*

Patrick Griggs tabled the report of Charles Goldie, Chairman of the Charitable Trust which outlined their investment strategy aimed at producing the annual income required by the Trust (currently estimated at £15,000) together with a certain amount of growth in the portfolio to protect the capital value of the fund against the effects of inflation.

There was then a general discussion on the successful transfer of the funds, and its present value, and there was a consensus that the Treasurer, Benoit Goemans, should liaise with the trustees of the Charitable Trust in order to ask for their advice on investments and to seek alternative investment, on the local market.

7. *Conferences, etc.*

(a) *Final Report on Cape Town Colloquium 2006*

The Secretary-General said that the Colloquium was a success, all accounts have been settled, papers put on the website, and gratitude expressed to James Mackenzie and his organizing committee of the South African MLA, and to the PCO, African Agenda Inc. The Executive Council thereupon expressed its thanks and congratulations to Mr. Frawley and to the South African organizers for a very successful Colloquium.

(b) *Dubrovnik Symposium 2007*

Mr. Frawley reported on the plans for the symposium programme and the social excursions and events and advised that he and Igor Vio of the Croatian MLA intend to distribute a second Announcement of the assembly, symposium and social events in the near future. After discussion on the programme with valuable advice given, it was left to the Secretary-General to finalize the programme with Mr. Vio, keeping the cost to delegates at a minimum.

(c) *Athens Conference 2008*

Mr. Timagenis tabled the report of the chairman of the organizing committee, Mr. J. Markianos, dated November 9, 2006 plus his previous report dated February 9, 2006 and the outlined program. The first Announcement will be distributed to national MLAs in February or March 2007 and the program with detailed information in January 2008. The organization of the conference is well underway. The Executive Council expressed their gratitude to Mr. Timagenis, Mr. Markianos and to the Greek organizing committee for their fine efforts. The President said that the Planning Committee would meet for the first time in

Dubrovnik and their first order of business will be the substantive programme for the Athens Conference.

(d) *Colloquium in Chile 2010*

Mr. Guzman reported that this colloquium was under active discussion in Chile within the MLA of Chile.

(e) *Conference in China 2012*

Henri Li advised that this matter has been discussed within the China MLA and that they look forward to hosting the conference.

(f) *Draft Guidelines for Colloquia*

Mr. Frawley said that he had prepared a second draft of guidelines based on the experience at Cape Town. He tabled the draft. After discussion, the Executive Council approved the draft guidelines and instructed Mr. Frawley to bring them into final form for use in the future.

8. *Publications*

(a) *Yearbooks, Newsletters & Website*

Mr. Berlingieri said that the proofs of the Yearbook have been reviewed and it will be published and posted on the website in the near future. Publication of issue No. 2 of the newsletter will be reviewed and printed and posted on the website in early December. There was general discussion about the number of copies to be printed and the cost. This will be taken under consideration by Mr. Berlingieri. The Councillors extended its gratitude to Professor Berlingieri for his excellent work on publications.

(b) *Storage of CMI Archives; Publications on CD ROM*

Mr. Fransen said that the complete archives and CD ROMs have been moved to the secretariat at its new address in Antwerp.

(c) *Handbook on Maritime Conventions – French Version*

The President advised that Frank Wiswall had told him that he is willing to prepare an Athens edition for the 2008 Handbook on Maritime Conventions. Apparently Libby Wiswall is willing to contribute the artwork. The Executive Council noted their appreciation to Frank and Libby and authorized him to negotiate a new contract with Lexis-Nexis along the lines for the previous Handbook. At the same time, the Executive Council said that it would authorize the French MLA to publish a French version of the English edition.

9. *Work in progress*

(a) *UNCITRAL Draft Instrument on Carriage of Goods*

Francesco Berlingieri reported that he had attended the first week of the Vienna session of Working Group II during which a number of topics were discussed. The Executive Council noted the details of those topics and expressed its thanks to Mr. Berlingieri for his attendance and report.

(b) *Issues of Marine Insurance*

There was no report given.

(c) *Criminal Acts Committed on Foreign Flag Ships*

Mr. Frawley reported that the Joint International Working Group on Uniformity of Law re Maritime Criminal Acts met in London at its 7th session on April 10, 2006. The document that the Working Group is preparing – Maritime Criminal Acts – a Draft Code for National Legislation – dealt with the concerns arising from the Japanese case involving the SS TAJIMA. The Group will be holding its last meeting on December 6, 2006 and the final document will be transmitted to the IMO in early 2007. Mr. Wiswall will send a report to the CMI shortly after the December 6th meeting.

(d) *Implementation and Interpretation of International Conventions*

The Executive Council noted the work being done by Francesco Berlingieri and Gregory Timagenis on voluntary rules in matters of domestic procedural law. The Executive Council thanked them for their work and decided to discuss this matter further at the Dubrovnik Executive Council meeting.

(e) *Procedural Rules in Limitation Conventions*

Mr. Berlingieri reported on the work of the Group consisting of himself, Gregory Timagenis and Luc Grellet, and the Executive Council then decided to constitute an International Subcommittee under the joint chairmanship of Mr. Berlingieri and Mr. Timagenis; that they cover the three limitation conventions (LLMC, CLC and HNS) in their efforts and that they should work towards draft guidelines and not an International Convention.

(f) *Salvage Convention*

Mr. Berlingieri reported on the implementation, or lack thereof, of the Salvage Convention 1989 and commented that the IMO had never received any document pursuant to the resolution annexed to the Convention that requires member States to transmit the text of any national instrument

enacted in relation to the Convention. He said that he had prepared a digest of the responses to the Questionnaire sent to national MLAs and the Executive Council must consider this and decide whether or not something more should be done. The Executive Council took note of the position and took the matter under advisement.

(g) *Places of Refuge*

Mr. Hetherington reported that since the Assembly and Executive Council meeting held in Cape Town in February 2006, a Questionnaire had been distributed on this subject to national associations and that several responses had been received. He then said that he had been advised by the Secretary-General of the International Salvage Union that the CMI might be interested in becoming involved in a project initiated by the Bahamas flag and the Maritime Safety Committee of the IMO, to develop guidelines covering the responsibilities of all parties in a maritime emergency and to clarify the chain of command. The Executive Council then decided to convene an international Subcommittee to consider this topic under the chairmanship of Stuart Hetherington with a view to possibly holding a meeting in Dubrovnik in order to prepare documentation for the Athens Conference in 2008.

(b) *Arrest Convention*

Mr. Berlingieri reported that the 1999 Convention is not in force yet and brought the Executive Council up to date on developments. The Executive Council took note of the position.

(i) *Wreck Removal*

Mr. Griggs referred to the report by Richard Shaw of the October meeting of the IMO Legal Committee and said that in his view it was unnecessary for the CMI to be represented at the Diplomatic Conference in Nairobi next May. He believed that most of the major issues have been resolved or will be resolved before May 2007 through the Intersessional Correspondence Group. The Executive Council took note of the report and expressed its thanks to Richard Shaw.

(j) *Fair Treatment of Seafarers*

The present status of the Working Group on this subject was set forth in an exchange of e-mails which were tabled between Edgar Gold, Kim Jefferies, Linda Howlett and David Hebden, chairman of the Working Group. The President noted that somebody from the Executive Council should be acting as a link with that working group and asked Nigel Frawley to continue to liaise with David Hebden. The Working Group is presently following closely the development of the IMO guidelines.

(k) Future Topics

The Executive Council discussed the possibility of ship recycling, the promotion of quality shipping and a charterer's right to limit as future topics. Mr. Griggs advised that one of his colleagues at Ince & Co. will be preparing a document on recycling of ships and asked if the CMI would be prepared to check that document and that it be submitted under the name of the CMI to give it additional weight. The President asked Mr. Alcantara and Mr. Frawley to check Mr. Stockwood's document and advise the Executive Council whether or not it should be submitted as a CMI document. The Executive Council then turned to a request made by the Director of the IOPC Fund dated October 12, 2006 to undertake a study on non-technical measures to promote quality shipping for carriage of oil by sea with the aim of identifying factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices, and identifying whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil. The Executive Council agreed that the CMI should take up this request and assist the IOPC Fund. Mr. Griggs offered to produce a note relating to charterer's rights of limitation in the U.K. and this was gratefully accepted by the Executive Council. Mr. Alcantara then suggested that the Eurosection should be reinstated in the CMI to review EU legislation relating to maritime issues. The President invited Mr. Fransen to contact Eric van Hooydonk to ask whether he would be interested in cooperating with the CMI in this respect.

10. Young members issues

Following a report by Mr. Alcantara on the subject of an open contest of essays for the Athens Conference in 2008, there followed considerable discussion on this issue. The President invited Mr. Goemans to review the various suggestions from Councillors and to assess the necessary budget for publicity and that a report should be tabled at the next Executive Council meeting when the project would be announced at the Assembly in Dubrovnik. The President asked that the initiatives taken by young members of certain national associations should be discussed further in Dubrovnik.

11. Administration

(a) New Office and Procedures for Pascale Sterckx
Mr. Fransen reported on the CMI secretariat's

move on September 28, 2006 to Everdijstraat 43, Antwerp. He advised also that a meeting was held at this address on October 20, 2006 with the President, the Treasurer, the Administrator and Pascale Sterckx present. The results were new procedures for Ms. Sterckx and Mr. Goemans to be instituted with a view to greater efficiency.

12. International Organizations

(a) Representation of CMI at Meetings of the IMO and IOPC Fund

Mr. Griggs said that he and Richard Shaw had attended a meeting of the IMO Legal Committee which took place at the UNESCO headquarters in Paris during the week of October 16, 2006. He tabled Richard Shaw's report which showed that the three principal items on the agenda were the draft Wreck Removal Convention, ratification of the 2002 Protocol to the Athens Convention on the Carriage of Passengers, and the Fair Treatment of Seafarers in the event of a Maritime Accident. As to Wreck Removal, Mr. Shaw reported that the scope of application of that draft convention was the subject of some controversy involving wrecks in the Exclusive Economic Zone, and the internal waters and territorial sea of Coastal States. These differences must be ironed out before the Diplomatic Conference to be held in Nairobi during the week of May 14, 2007. As to ratification of the 2002 Protocol to the Athens Convention, Mr. Shaw reported that the Protocol was intended to bring the 1974 Athens Convention up to date by increasing the limitation fund for passenger claims. However, governments have found themselves unable to ratify the Protocol since they cannot satisfy its insurance requirements. Discussions have been ongoing between interested parties to see whether a satisfactory formula can be achieved. A set of guidelines has been agreed setting out the terms of the arrangement enabling states to ratify the 2002 Protocol and thus to enter into force. An agreed standard form of Reservation has also been drafted. As to Fair Treatment of Seafarers, a set of guidelines was developed by a joint IMO/ILO working group. They were adopted by the Legal Committee of the IMO at its meeting in February 2006 and by the governing body of the ILO in June 2006. Certain reservations were expressed at the Legal Committee meeting concerning details of the guidelines. These were referred to a working group which recommended that while the guidelines could be improved in certain respects, they should be given time to enter into effect before attempts were made to change them. This recommendation was adopted by the Legal

Committee, with a proviso that the Committee should review the working of the guidelines at its next meeting in October 2007.

Mr. Griggs then reported on IMO activities within the context of its strategic plan and reviewed instances where the CMI is involved in a number of these projects and might offer assistance in others. He said, for instance, that the CMI's working group is still following the guidelines on Fair Treatment of Seafarers and may be able to contribute where difficulties arise in the future. He said that the IMO Legal Committee work on revised Civil Liability and Fund Conventions has been postponed pending outcome of deliberations at IOPCF and has been shelved by them for the time being. He said that the CMI might assist in giving guidance on implementation of the HNS convention, and guidelines for and interpretations of the 2002 Athens Protocol. He said that the CMI might involve itself in the implementation and interpretation of limitation conventions based on a survey by the CMI of State practice. A CMI working group on this is concentrating to begin with on the LLMC and protocol; and the CMI is already assisting IMO regarding criminal offences committed on foreign flag ships. Frank Wiswall has just produced a new draft of a Code for national legislation which should be reviewed by the Executive Council. He said that the CMI might assist IMO in the identification of reasons why certain instruments have not come into force and consider strategies to encourage States to implement them and develop means for addressing identified concerns. The CMI is reviewing the IMO guidelines on the identification of Places of Refuge apart from its own work on the subject. Mr. Griggs recommended that the CMI should monitor the correspondence groups being set up by the IMO Legal Committee to work on instruments intersessionally and where appropriate, be represented on those groups.

(b) Draft Guidelines for Observers

Mr. Frawley said that a select committee comprising Karl Johan Gombrii, Francesco Berlingieri, Stuart Beare, Richard Shaw and himself was formed following the Paris Executive Council meeting to prepare guidelines for Observers. He tabled draft No. 2 of such guidelines and sought the views/approval by the Executive Council. After discussion, the Executive Council adopted these guidelines and thanked Mr. Frawley for his efforts in chairing the select committee.

(c) Cooperation with IMLI and World Maritime University at Malmo

After discussion, the Executive Council decided that it will endeavour to pursue further cooperation with these institutions.

13. Next meeting of the Executive Council

The next meeting of the Executive Council will be held at the Hilton Imperial Hotel in Dubrovnik, Croatia at 8:30 am (local time) on Thursday, May 10, 2007.

14. Next Assembly

The next assembly will be held at the Hilton Imperial Hotel in Dubrovnik at 10:00 am (local time) on Friday, May 11, 2007.

15. Other business

Several matters were raised. Mr. Gombrii advised that at the recent UNCITRAL Working Group III session in Vienna, the secretary of UNCITRAL met with Mr. Gombrii and Stuart Beare to discuss the Congress which is going to be organized during the summer of 2007 in connection with the next meeting of the UNCITRAL Commission in New York. The aim is to have a free and non-committing exchange of views as to what can be done by whom in the future. Clearly, one of the objectives is to try to find issues for the future UNCITRAL agenda. Mr. Gombrii recommended that the CMI consider finding areas of work for itself and that we should advise UNCITRAL's secretary of this in the near future. He suggested that there are a number of issues which could be potential topics such as letters of indemnity, performance guarantees, and the concept of consequential loss. He also referred to the confusion existing around the practicalities of mate's receipts, bills of lading and delivery orders. He thought that the preparation of a study or a manual on the UNCITRAL Instrument could be of assistance. He concluded by saying that UNCITRAL would welcome suggestions for maritime law topics which could be considered during the 2-hour slot allocated to maritime law on July 11, 2007. He recommended that a small correspondence group of three to four persons could be set up with a view to developing a proposal which, after having been circulated to the Executive Council members, could be submitted to UNCITRAL, hopefully before the end of 2006. Mr. Gombrii's proposal was supported by the Executive Council and agreed that a small correspondence group be formed to consider possible topics for submission to UNCITRAL. (Note: Following the meeting, Mr. Gombrii spoke

with the Secretary of UNCITRAL and learned that the programme for the Congress had been recently settled and that what he wanted now from the CMI was a proposal for speakers at the Congress on the topics agreed.)

Mr. Guzman reported that he had been asked by the President of the Iberoamerican Institute of Maritime Law to attend the XIth Congress at Santo Domingo November 7-10, 2006 to speak about the CMI, its importance and relations with the Institute. He said that 153 members of the Institute attended this event and his impression was that members of the Institute have a positive attitude towards growth and creativity. He cited as an example their project for a Uniform Maritime Code for Latin American countries.

16. Termination and concluding remarks

The President summed up by saying that several concerns remain on the general use of CMI funds, the need to find proper ways to provide member associations with the service they are entitled to expect from the CMI, the possibility of attracting more young members and the need to define a genuine identity of the CMI in its role in the international maritime law-making process and its image to the world's maritime community. He said that these would be put on the agenda for the Executive Council meeting in Dubrovnik. He concluded in expressing his thanks to Nigel Frawley, Pascale Sterckx, Wim Fransen and Benoit Goemans for their contribution to the preparation of the e-mail meeting of the Executive Council.

CMI ASSEMBLY & SYMPOSIUM, DUBROVNIK, 10-13 MAY 2007

PRELIMINARY PROGRAMME

As already announced on the CMI website, the Assembly of the CMI, preceded on Thursday 10th May 2007 by a meeting of the Executive Council, will be held in Dubrovnik in the morning of Friday, 11th May. In the afternoon and in the morning of Saturday 12th May, the Croatian Maritime Law Association will host a joint CMLA and CMI Maritime Law Symposium. The preliminary programme is the following:

Thursday, 10 May

CMI EXECUTIVE COUNCIL MEETING (08:30-17:30)

WALKING TOUR ALONG THE CITY-WALLS OF DUBROVNIK (16:30-18:00)

WELCOME RECEPTION light cocktail at the Maritime Museum or Revelin Fortress (18:00-19:30)

DINNER smaller groups in private restaurant – The Old Town (19:30-22:00)

Friday, 11 May

CMI ASSEMBLY (10:00-12:30)

Assembly - part I (10:00-11:00)

Coffee Break (11:00-11:30)

Assembly - part II (11:30-12:30)

Lunch Break (12:30-14:00)

MARITIME LAW SYMPOSIUM – CMLA SESSION (14:00-17:30)

Symposium - part I (14:00-15:30)

Coffee Break (15:30-16:00)

Symposium - part II (16:00-17:30)

GUIDED SIGHTSEEING TOUR OF THE OLD TOWN: the Sponza and Rector's Palaces, the Dominican Monastery, the Old Pharmacy, the Cathedral (18:00-20:00)

RECEPTION AND DINNER with the Dubrovnik traditional music & dance ensemble "Lindjo" at the Hilton Hotel terrace (weather permitting) or in the restaurant (20:30-23:00)

Saturday, 12 May

MARITIME LAW SYMPOSIUM – CMI SESSION (09:30-13:00)

Symposium - part I (09:30-11:00)

Coffee Break (11:00-11:30)

Symposium - part II (11:30-13:00)

Lunch (13:00-14:30)

EXCURSION to the Konavle region and old town Cavtat (by bus) or boat trip to the Elafiti Islands (to be established) – any of the two options would include dinner with traditional Dalmatian food (15:00-20:00)

Sunday, 13 May

EXCURSION TO THE PELJESAC PENINSULA (lunch included) - travelling along its famous vine-paths, sightseeing tour of the medieval town of Ston and visit to the Franciscan monastery in Orebic (10:00-19:00)

FREE EVENING AND DINNER

smaller groups in restaurants in The Old Town

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

PROTOCOL OF 2002 TO THE ATHENS CONVENTION ON PASSENGER LIABILITIES

RESERVATION AND GUIDELINES ADOPTED BY THE LEGAL COMMITTEE OF IMO

The text of the Reservation and Guidelines adopted by the Legal Committee of the International Maritime Organization at the meeting held in Paris in October 2006 is reproduced below by kind permission of the International Maritime Organization. An introductory note is included in the Report on the October 2006 Meetings set out in the 2006 News Letter at page 6, and those comments will not be repeated here.

The principal objective of the new instruments was to modify the insurance requirements of the new Athens Convention so that they were compatible with the relevant insurance coverage available on the world markets. Without the appropriate insurance, Contracting States would be unable to certify that vessels flying their flag had in place insurance against the risks set out in the substantive provisions of the Convention, and thus would be unable to ratify the Convention.

Although the Guidelines and Draft Reservation deal with insurance clauses applicable in all kinds of insurance and related ship owners' liabilities, their principal thrust concerns the problems of War Risks Insurance, including terrorism. They do not, for example, deal with possible difficulties in obtaining cover with provisions for automatic reinstatement, which some claim is required by paragraph 6 of Article 4bis of the consolidated text (Art. 5(6) of the 2002 Protocol).

Likewise the War Automatic Termination of Cover and "Five Powers War" provisions, and the operation of the 30 days clause in paragraph 2.2.3 of the Guidelines, will all terminate the war cover

in circumstances which are strictly not permitted by Art.4bis para 6, but flag states will be permitted by the Reservation and Guidelines to certify the cover as being compliant with the requirements of Article 4bis of the 2002 Convention – see the Model Certificate annexed to the Guidelines.

War etc. risks and intentional acts of third parties are excluded from the strict liability provisions of Art 3(1) by sub-paragraphs 3(1)(a) and (b). Acts of terrorism are excluded by sub para (b) if the passenger injury/death was *wholly* caused by such acts, but the ship owner will be strictly liable if there was an *additional* cause which could be attributed to the Carrier (e.g. inadequate security measures).

The overall cap of 340 million SDR will only apply in cases of personal injury caused by terrorism for which the Carrier had some measure of responsibility. In reality, of the heads of war insurance listed in paragraph 2.2 of the Guidelines, only an act of any terrorist, and just possibly capture seizure etc of the ship (or possibly of the passenger) are likely to give rise to liability to a passenger for personal injury under the amended Convention.

This means that passenger claims for death or injury caused by acts of terrorism will only reach the cap of 340 million SDR if the number of claimants exceed 1,360 if the limit of 250,000 per passenger applies, or 850 if there is proved fault on the part of the carrier and the limit of 400,000 SDR applies.

RICHARD SHAW*

* Senior Research Fellow – University of Southampton Institute of Maritime Law

IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION
OF THE ATHENS CONVENTION¹

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.

¹ Annex 5 to the Report of the Legal Committee on the work of its ninety-second session (Document LEG 92/13).

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 A²):

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 detention, 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 Appendix omitted.

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 B³.

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.

³ Appendix omitted.