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ANY OTHER BUSINESS

Liability cover under the Protocol of 2002 to the Athens Convention, 1974

Submitted by the International Group of P&I Clubs

SUMMARY

Executive summary: The International Group is concerned that sufficient liability cover may not be available to permit certification of the liability under the Athens Protocol 2002 and wishes to bring this concern to the attention of States that intend to ratify the Protocol.

Action to be taken: Paragraph 10

Related documents: -

Athens Protocol 2002

1 It will be recalled that, at the Diplomatic Conference at which the 2002 Athens Protocol was adopted, the International Group explained that it was unlikely that either the Clubs in the International Group or the commercial insurance market would be able to comply with the insurance requirements of the Protocol. Moreover, in addition, it was suggested that both the Clubs and the market would encounter considerable difficulty in complying because of the position adopted in relation to war risks and terrorism. Nonetheless, conscious of the desire of States to seek early ratification of the Protocol, it was decided that Clubs should be requested, at an early stage, to indicate their final views so that Clubs would be in a position to respond to States' enquiries with regard to implementation. For this purpose, it was proposed that Clubs should be advised of the alternatives available to them in approaching the issue of capacity. However, it was realised that because of developments in the market, the issue of terrorist risks and market exclusions would have to be brought to the attention of IMO before Clubs could go on to consider the general issue of cover. A similar report would have to be made to the EU Commission in view of the timetable sketched in the Proposal for a Council Decision of 24 June 2003.

2 Two issues should be highlighted: the general war risks exclusions and the so-called "bio-chem." exclusion.

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3 Within the insurance market there are separate sectors dealing respectively with hull insurance, P&I insurance and war risk insurance. The hull and P&I markets have traditionally excluded war risks, which are covered by the War Risks market. A shipowner would normally cover his hull war risks together with his P&I War Risks with a War Risk underwriter up to the insured value of the hull. War Risks include terrorist risks.

4 In 1988 there was a change so far as P&I War Risks were concerned. Because of the potential exposure to a P&I War Risks claim in excess of the hull insured value, the Clubs in the International Group agreed to purchase P&I War Risks cover in excess of the hull insured value. This was initially to a limit of \$50 million but is now to a limit of \$400 million. The availability of this level of cover in the future will depend on the willingness of the market to accept this degree of risk. Cover is limited to \$50 million for named accommodation vessels operating in Athens for the period of the Olympic Games.

5 Because the Clubs' P&I War Risks cover is only an excess cover which insures War Risk liabilities above the limit of the cover (i.e. the value of the hull) in the underlying War Risks policy, the Clubs may not cover, and cannot certify that they do, any liability arising under the Athens Protocol which would fall within the underlying policy. At the other end of the scale, if multiple claims arose from a war/terrorism incident and were likely to penetrate into their excess layer, the Clubs would not cover, and therefore could not certify that they did, the larger capacity passenger vessels where the total exposure under the Athens Protocol would exceed the limit on the War Risks P&I cover of \$400 million.

6 The second problem is more pervasive: in the wake of the terrorist attacks of 9/11, the marine insurance market introduced an exclusion clause similar to the following, which applies to both direct insurance and reinsurance, with the consequence that cover is simply not available in respect of liabilities excluded by the clause:

“In no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from --- any chemical, biological, bio-chemical or electromagnetic weapon.”

7 As a consequence of these two limitations on cover, Clubs will be unable to provide the Certificates of Financial Responsibility required under the Athens Protocol, since they plainly cannot certify that cover is available when it is not, and regulatory authorities would not permit them to do so in any event. Moreover, since the latter exclusion, in particular, applies across the market, cover will not be available from the commercial market either.

8 As has been reported to the IOPC Fund, the same structural problems arise in relation to the Certificates required under the Civil Liability Convention 1992, but these have been avoided in co-operation with the Clubs' re-insurers, reflecting the fact that these Certificates have been issued for the past thirty years. This solution is unlikely to be available in relation to the implementation of the HNS and Bunkers Conventions. The problem is compounded by the much greater exposure required by the Athens Protocol.

9 The International Group of P&I Clubs has no solution to offer, but felt it was nonetheless imperative to bring the matter before IMO and the European Commission so that it could be addressed before the process of implementation gets under way. The International Group stands ready to assist in any discussion on this topic.

Action requested of the Legal Committee

10 The Legal Committee is invited to take note of the information in this submission.
