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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.

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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 4*bis* 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 4*bis* 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]

..... As agent only for ***War Risks, Inc.***
Signature of insurer

* * *

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to article 4*bis* 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 an 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 4*bis* 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]

..... As agent only for ***PANDI P&I***
Signature of insurer

* * *

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 4*bis* 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 4*bis* 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 4*bis*, 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.