

# Putting a price on human life

The fraught question of how much a human life is worth has thrown efforts to devise a new convention on passenger compensation off course.

**JIM MULRENAN**

**London**

The next time a cruiseship or ferry goes down with massive loss of life would \$64,000 per body be too little or \$1.38m too much?

And if passengers are entitled to high levels of compensation, who is going to pay?

A new generation cruise-ship such as Royal Caribbean (RCCL)'s *Voyager of the Seas* can carry 3,500 passengers, creating a limitation figure (at \$1.38m per person) of \$4.83bn.

This exceeds the limit of P&I club cover by \$580m, before any provisions for compensation for the 1,000 crew such as a vessel might have or for payment of any other claims.

Brutal calculations like this will be a fact of life over the next two years as preparations are made to update the Athens Convention on passenger compensation.

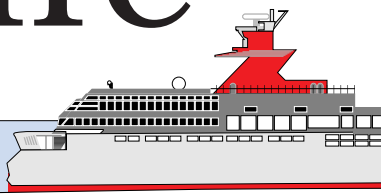
Although the need for a new passenger convention is widely acknowledged, lack of agreement on what is a fair level of compensation has already lost the issue an early slot in the schedule of forthcoming diplomatic conferences.

When government representatives get together next year to consider a new convention they will be debating matters relating to bunker spills rather than people.

Dissatisfaction with the Athens Convention has already led to higher limits being introduced in several European countries.

Further delay increases the risk of the compensation

## HOW VARIOUS PASSENGER LIABILITY LIMITS WORK OUT FOR CRUISESHIPS AND FERRIES



Vessel	Passengers capacity	Existing Athens Convention (SDR 46,666) \$64,000	New Athens Protocol (3 alternative proposals)		
			(SDR 175,000**) \$241,000	(SDR 350,000) \$482,000	(SDR 1m) \$1.38m
<b>Carnival Triumph</b>	3,300	\$211m*	\$795m	\$1.59bn	\$4.55bn
<b>Napoleon Bonaparte</b>	2,442	\$156m*	\$588m	\$1.18bn	\$3.37bn
<b>Norwegian Dream</b>	1,209	\$77.4m*	\$291m	\$583m	\$1.67bn
<b>Queen Elizabeth II</b>	1,850	\$118m*	\$446m	\$892m	\$2.55bn
<b>Silja Symphony</b>	2,656	\$170m*	\$640m	\$1.28bn	\$3.66bn
<b>Stena Germanica</b>	2,500	\$160m*	\$602m	\$1.20bn	\$3.45bn
<b>Sun Vista</b>	1,224	\$78m*	\$295m	\$590m	\$1.69bn
<b>Voyager of the Seas</b>	3,500	\$224m*	\$843m	\$1.69bn	\$4.83bn

\* Total per ship liability could be capped at \$34.4m \*\* The latest Athens Protocol figure failed but it is still in the running

system being further fragmented.

The basic problem with passenger compensation is that almost any figure put forward is regarded as too low by some parties and far too high by others.

It also seems inevitable that compulsory insurance will be introduced for passenger-ships to give their cargo equal status with oil and hazardous substances, which have already achieved this convention status.

The limit of tanker spill compensation, even under the latest conventions, is, however, only \$186m while for hazardous and noxious substances the figure is \$344m although the treaty has yet to enter force.

The limits at stake are thus much more affordable, quite apart from the fact that in these cases financial responsibility is split between owner and cargo interests.

The 1974 Athens Convention limits the liability of a shipowner and hence the amount paid by his P&I club to just Special Drawing Rights (SDR) 46,666 (\$64,000) per person.

Strictly speaking, this liability only arises where there has been fault or negligence

by the carrier. Under the 1976 Limitation Convention there is also a per ship limit of SDR 25m SDRs (\$34.4m) after which claims would be scaled down.

The 1990 protocol to the Athens Convention lifts the compensation limit to SDR 175,000 (\$241,000) but only three countries have ratified the treaty, which is unlikely to ever enter into force.

While SDR 175,000 is probably the "lowest common denominator" figure that will end up in the convention, the UK and some other European countries favour SDR 300,000 or SDR 350,000 (\$482,000) while Norway has espoused a SDR 1m (\$1.38m) limit.

An ingenious idea, which has the backing of Japan, is to adopt the two-tier compensation scheme recently adopted for the aviation industry. This gives automatic no-fault compensation up to a certain point with unlimited compensation available if there has been negligence.

While SDR 175,000 per person is regarded as too high by a number of countries, the International Group cartel, the association that links together 14 P&I clubs, says it could live with the figure even if it was part of a compulsory regime.

The clubs are, however, pressing for an aggregate limit of SDR 90m (\$124m) per ship, together with a requirement that all claims be brought in the jurisdiction where a claims-limitation fund is established.

The clubs say the centralised claims-handling approach worked well in the case of the *Estonia* ferry disaster, producing a prompt and fair outcome.

On the wider question of a passengership claim breaching the limit of P&I cover the clubs argue that it would not be feasible to introduce a higher limit for passenger-ships alone as they constitute a relatively small proportion of world tonnage.

Countries favouring more generous limits, however, see no reason that compensation levels, on such an emotive subject as loss of life or personal injury, should be conditioned by the insurance industry.

Most cruiseships have strong US links so shipowners and P&I clubs already live with the likelihood that a US court would award so massive a compensation that it would make the Athens Convention debate look like a squabble over petty cash.