



## Controversy still clouding Athens Convention 2002

Policymakers and marine insurers have opposing views over the 'workable compromise', writes Aline De Bievre

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COMPROMISE is the stuff of fragile consensus between parties with widely diverging interests. Any shared perception of its workability may not survive long outside the conference room once the practicalities, including costs, of its effective implementation have to be addressed.

Hailed as a workable compromise when it was adopted by the International Maritime Organisation (IMO) last November, the Athens Convention 2002 continues to raise intense controversy.

The gulf between public policymakers and marine insurers was exposed once again at a recent panel discussion in London, organised jointly by the British Maritime Law Association and the Southampton Institute of Maritime Law.

According to Steamship Insurance Management Services Ltd's Stephen Martin, it was 'the mix of measures' that was problematic from the viewpoint of the P&I clubs, which provide insurance at cost to their mutual membership.

For instance, the clubs could have lived with exposure to direct action up to Special Drawing Rights (SDR) 100,000, "yet they are asked to live with two and half times that — SDR 250,000".

Mr Martin also suggested that the provisions concerning liability for shipping incidents would make it hard to move away from strict liability, leaving it up to the carrier to prove that he was not at fault.

"The way the new convention is drafted regarding shipping incidents will mean that it will be strict liability all the way through to the SDR 400,000 limit," he said. UK Department of Transport John Wren said that his government intended to denounce the old (1974) Athens Convention "as soon as possible".

Its first priority was to secure "proper compensation, that is, adequate limits and compulsory insurance".

Changing the liability regime had not been the UK's top priority, he added. However, the balance between strict liability and reversed burden of proof had been "a positive outcome".

P&O Princess Cruises executive vice-president Gwyn Hughes stressed that the vast majority of passenger claims "have been paid at the level sought" under existing maritime liability limitation rules.

The insurability of Athens 2002 remained an issue, he said. "We are not so optimistic as the UK... My concern is the future viability of the [cruise] industry. We face a package of measures which may not have a solution."

Mr Wren questioned, however, whether the industry should build such huge passenger ships "if there isn't the insurance capacity".

Attempts to limit the Athens Convention's revision to passenger ferries, given their prime role in providing public transport, had failed, he said

"We sought desperately and without success" to arrive at a satisfactory definition in this respect, he commented

He warned that a European Union directive could not be ruled out. "We were not just there [at the IMO] to uphold the mutual system ... The European Commission won't go round and ask questions about insurance capacity."

Does the disharmony really matter? After all, the drafters, united in their goal to strive for harmonisation of the law as they may have been, made effective provision for the infamous opt-out clause. This leaves state parties the choice to impose higher liability limits or unlimited liability on carriers subject to the jurisdiction of their courts.

Pressed on this issue, Mr Wren said that the UK "will probably not opt out. But, it is nice to have it there for the future ... possibly as an opt-out for UK flag ships."

Ten states need to accept or ratify the Athens 2002 Convention, and to denounce the 1974 convention and its two protocols, before it can enter into force.

Incidentally, shipowners looking for extra legal protection in the current uncertain political climate may be disappointed. No express terrorism defence is provided by the new convention.

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