

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 2 - MAY/SEPTEMBER 2012

News from the CMI:

- Minutes of the Executive Council meeting held by e-mail conference during the week commencing 23 April 2012 chaired by the President from his office in Oslo
- Report on the Seminar and Other Events held at Oslo from September 25-27, 2011

News from Intergovernmental and International Organizations

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- News on Interim guidance on use of privately contracted armed security personnel on board ships in the high risk area
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NEWS FROM THE CMI

MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD BY E-MAIL CONFERENCE DURING THE WEEK COMMENCING 23 APRIL 2012 CHAIRD BY THE PRESIDENT FROM HIS OFFICE IN OSLO

Participating:

<i>President:</i>	Karl-Johan Gombrii
<i>Vice Presidents:</i>	Stuart Hetherington Johanne Gauthier
<i>Immediate Past President:</i>	Jean-Serge Rohart
<i>Councillors:</i>	Giorgio Berlingieri Christopher Davis Jorge Radovich Måns Jacobsson Sergej Lebedev Dihuang Song Louis Mbanefo Andrew Taylor
<i>Secretary-General:</i>	Nigel Frawley
<i>Administrator:</i>	Wim Fransen
<i>Treasurer:</i>	Benoit Goemans

1. *Opening remarks of the President*

The President opened the meeting by explaining the procedure to be followed.

He then made the following remarks:

i) He has been actively involved i.a. in the work on the revisions to the York Antwerp Rules 2004, the proposed Singapore representative office and the Beijing Conference, including the Shanghai Add-On.

ii) He explained that, due to circumstances beyond its control, the Audit Committee had not been able to produce a report for this meeting. The reason is that a few relatively insignificant figures had to be checked which regrettably took longer than expected. Subject to that, the Audit Committee, which met by way of telephone conference on 3 April 2012, was generally content with the accounts. He suggested that the procedure arising from that circumstance should be as follows:

The Executive Council (“ExCo”) should consider and, hopefully, adopt the accounts and budget for next year, but with a proviso that the Audit Committee and the external auditors submit their respective reports within three weeks and are found to be satisfactory by Dihuang Song and Jorge Radovich, two councillors who are not members of the Audit Committee, in order to save time. As an alternative, he suggested that the Audit Committee report, once received, be circulated to all members of ExCo and that they be given a short week to consider and either confirm or withdraw the conditional approval which he assumes will be given at this current ExCo meeting.

iii) As to the budget for 2013, a decision thereon implies taking a position on subscriptions for 2013. He advised that the Treasurer has produced different alternatives, all producing a deficit, although of very much different sizes. The President said he was inclined to recommend Budget alternative C and that the subscriptions be set to the levels decided by the 2009 Assembly in Rotterdam with an early bird discount of 10%.

iv) Regarding limitation of liability and Gregory Timagenis’ proposal in his e-mail of 2 April 2012 he said that he was concerned that the work has been going on for four years and that the ExCo would like to see it wrapped up within a reasonable time, at least as regards its present phase, i.e. the Commentary and List of Issues. He reminded the ExCo that, at its meeting in Buenos Aires in October 2011, it decided “to ask Mr Timagenis to invite a further round of comments so that they may complete the List and Commentary by 31 March 2012 if possible and to submit them to the Executive Council for a decision on any further action”. He said that Mr Timagenis has requested that the Questionnaire be sent out again because he has only received a few replies. The President thought it sufficient to send a reminder rather than to re-submit the questionnaire. He then

went on to say that Mr Timagenis suggested that the international sub-committee on limitation of liability be convened in Beijing. The President said that he is not keen on this because it would be adding new topics to the already full programme. It would also add to the cost of travel expenses. He said that an informal gathering of members of the International Sub-Committee who were already in Beijing might be useful. The President then said that he had drawn Mr Timagenis’ attention to the “List of Issues” contained in Norman Martinez’ recently published PhD thesis on limitation of liability which contains a number of additional issues which are worthy of consideration. In the circumstances, he recommended that we stand by our decision of last October and kindly asked Mr Timagenis to complete the work in its present phase and submit it to the Executive Council for consideration of any future action.

2. *Finances*

a) *Audited accounts for 2011*

The accounts for 2011 as presented by the Treasurer and corrected during the meeting were adopted, subject to the ExCo receiving and approving the Audit Committee Report which is currently scheduled to be completed in three weeks, and conditional on approval of the accounts by the External Auditor. Once adopted, the accounts will be submitted to the Assembly in Beijing on 19 October 2012 with a recommendation that the accounts be approved. (Note: Due to unavoidable circumstances, the Audit Committee Report was further delayed.)

b) *Revised budget for 2012 and budget for 2013*

The proposed revised budget for 2012 was adopted. The Treasurer’s three alternative budgets for 2013 were discussed. Alternative C was adopted with the recommendation that it be approved by the Assembly, which would result in NMLA subscriptions as decided at the 2009 Rotterdam Assembly with a 10% early bird discount. This would mean a budgeted deficit of approximately EUR 28,000 in 2013 and a corresponding reduction of the financial reserve.

c) *2013 subscription categories*

After discussion, it was decided to revert to the matter at the Beijing ExCo meeting and Assembly.

d) *Charitable Trust*

Tom Birch Reynardson’s review of the Charitable Trust finances and operations was noted with appreciation and interest.

e) *Audit Committee Report*

There was no report. See paragraph 2(a) herein.

3. *CMI Conference in Beijing and Shanghai Add-On*

a) *Update*

The ExCo approved the arrangements made thus far for the Conference and Add-On, and expressed its gratitude to the President, Secretary General and Chinese Organizing Committee for their efforts.

There was approval of less emphasis being given to making a profit and more on making it a successful conference.

b) Young Members' Session

The Young Members' Organizing Committee of Violeta Radovich (Argentina), Yiannis Timagenis (Greece) and Yingying Zou (China) have made contact with one another and their report is awaited through Andrew Taylor for details of their substantive session and social programme. There was a general feeling in the ExCo that encouragement to register, and perhaps financial inducements, should be given the young members by NMLAs. The President will consider a letter to NMLAs to that effect.

e) Judges' Session

It was recognised that the Judges' Session is an important initiative for the CMI. There was no opposition to the idea that the session be closed to other delegates. However, the Judges are to be encouraged to participate in the other topics in the general programme. There was support for the idea that the President send a letter to all NMLAs encouraging a good turn-out of their Maritime Judges. Johanne Gauthier and Dihuang Song will consider other ways and means of achieving this as well. At the present time judges from China, Canada and Australia are planning to attend. Måns Jacobsson as a retired judge from Sweden will attend. One councillor recommended arbitrators be invited as well, but there appeared to be little support for this. Johanne Gauthier will take this under advisement.

4. Members

The reports of Stuart Hetherington and Karl Gombrii regarding India, Poland, Indonesia, Malaysia, Honduras and the Ukraine, as potential new members were noted with appreciation and interest. As to Giorgio Berlingieri's reports regarding Morocco and Egypt, the following was resolved:

- i)* A letter should be sent to the President of the Moroccan MLA threatening expulsion for long-standing outstanding subscriptions which will give that NMLA ample opportunity to rectify the situation. It was also considered that guidelines for new MLAs should be sent to professor Cherkaoui of the MLA of Morocco. An expulsion process, pursuant to the CMI Constitution, should be prepared in readiness for the Beijing ExCo meeting.
- ii)* Giorgio Berlingieri was asked to communicate the concerns of the CMI regarding too narrow a base and the requirement for openness in the Egyptian MLA before their application for membership in the CMI can be properly considered.

It was noted that the purpose of Provisional membership is to try to pave the way for the formation of an NMLA which could become a member of the CMI, and decided that the activities and progress of the present Provisional members (in Kenya, the Democratic Republic of Congo and Honduras) should be reviewed by the ExCo at its meeting in Beijing with a view to deciding whether there is enough activity and

progress to warrant continued Provisional membership.

Stuart Hetherington will monitor the situation of the proposed Indonesian MLA.

5. Revisions to York Antwerp Rules 2004

a) Proposed revisions

The draft amendments to the York Antwerp Rules 2004 prepared by the IWG will be submitted in the near future to all NMLAs, and to those consultative members and outside third parties who might have an interest in the topic, with a request that any comments and proposals be submitted at a date well in advance of the 14–19 October 2012 Beijing Conference.

b) Procedural way forward

Given the short period of time between this virtual meeting and the conference in Beijing, the draft text together with all comments and proposals received will be submitted directly to and considered by the Conference in Beijing without an international sub-committee being established to consider the matter in the interim. The panel on this subject in Beijing will be chaired by Bent Nielsen and the rapporteur will be Richard Shaw.

It was decided that NMLAs should be asked for comments on the revisions before the Beijing Conference. It was also decided to send those materials not only to Consultative members, but also to interested parties such as the European Adjusters Association and users like the Department for Average Adjustment of the CCPIT in Beijing.

6. Status of Singapore Representative Office

The President was authorized to continue the negotiations with the Singapore Maritime Law Association with a view to establishing a CMI representative office in Singapore along the lines indicated in the President's report for this meeting and subsequent information to the ExCo. The final agreement shall be subject to approval by the ExCo and, in the current scenario, subject to Lawrence Teh being elected as Administrator by the Assembly. Caution was expressed to the following respects, which the President will bear in mind in the further negotiations:

- i)* The Representative Office must in all operative respects be independent of the Singapore Maritime Law Association and the Singapore Maritime Port Authority.
- ii)* Lawrence Teh, if elected, needs to ensure that a clear distinction is made between his role as Administrator and as Head of the Representative Office.
- iii)* Efforts are to be made to try to avoid discontent by other member associations in Asia as a result of Singapore being chosen as the site for the Representative Office.
- iv)* Efforts are to be made to try to avoid the incorrect impression that the CMI "Headquarters", "Siège" (in French) or "Head Office" would move to Singapore as a result of the establishment of a Representative Office in

Singapore or the election of an Administrator residing in Singapore.

Note: Since the 23 April 2012 ExCo meeting, it was decided to delay the implementation of the plans somewhat so as to enable the ExCo to consider the matter at its “physical” meeting in Beijing and also to inform NMLAs as to how the plans have developed since the last Assembly.

7. *CMI Conference 2016*

The invitation letter of the MLAUS dated 9 March 2012 to host the 2016 CMI Conference in conjunction with their Annual Spring Meeting was tabled and unanimously approved. The President was asked to write a formal letter of acceptance. (Note: Subsequent to the 23 April 2012 ExCo meeting, the Secretary General met with Vincent Foley, a partner at Holland & Knight’s New York office, and chairman of their Organizing Committee in New York on 4 May 2012 to discuss preliminary arrangements.)

8. *Other business*

a) *Limitation of liability*

The ExCo agreed with the President’s recommendation as set forth in sub-paragraph (iv) of his opening remarks. The President reported further that he had discussed the situation with Mr Timagenis and they had agreed it might be worthy of consideration at a later stage to form a new IWG tasked with the identification of issues which could be the subject of further work by the CMI. This idea was generally approved.

b) *Tension between regional and universal unification*
Måns Jacobsson reported on his recent attendance at a conference on this subject and it was noted with interest and appreciation. Several ExCo members noted that this was a subject worthy of consideration by the CMI.

c) *Richard Shaw*

It was resolved to recommend to the Beijing Assembly that Richard Shaw of the British MLA be elected as a Member Honoris Causa for his exceptional service to the CMI over the years.

d) *Consultative membership*

The issue was raised of whether LMAA, and other similar arbitration chambers/ commissions (for example, SCMA in Singapore and SMAC in Shanghai) should be offered consultative status even though they are not strictly “international organizations” as provided in the Constitution. Some support was noted, but also hesitation, and the matter will have to be discussed further at the next meeting of the Executive Council in Beijing.

9. *Closing remarks of the President*

Mr Gombrii thanked the Executive Council members for their constructive interventions. He also expressed his gratitude to Nigel Frawley and Pascale Sterckx for their preparatory work and support throughout the meeting. He then terminated the meeting.

KARL-JOHAN GOMBRII
President

NIGEL FRAWLEY
Secretary General

REPORT ON THE SEMINAR AND OTHER EVENTS HELD AT OSLO FROM SEPTEMBER 25-27, 2011

1. *Introduction*

At the Colloquium in Buenos Aires in October, 2010, the President, Karl-Johan Gombrii, announced that the next Assembly would be held in Oslo, Norway in September 2011. Accordingly, arrangements were made, in conjunction with the Norwegian Maritime Law Association (“NMLA”), for the Executive Council and the Assembly to meet in that City on September 25 and 27, 2011, respectively, and a seminar to be held on September 26, 2011.

2. *Meetings*

The Executive Council met on September 25th at the grand old offices of the Northern Shipowners Defence Club (“Nordisk”). (The Minutes of that meeting were subsequently published in CMI News Letter No. 3 - October/December, 2011 at p. 2). Members of the Executive Council expressed their appreciation for the use of Nordisk’s facilities and splendid luncheon that had been arranged by them.

The Assembly met at the impressive offices of the Norwegian Shipowners’ Association on September 27th. 55 delegates were present and the meeting was chaired by Mr. Gombrii. (The Assembly minutes were

subsequently published in CMI News Letter No. 3 - October/December 2011 at p. 8). Mr. Gombrii expressed his gratitude on behalf of all delegates for the use of their offices and the delicious luncheon that followed the meeting.

An International Sub Committee meeting for the problems associated with the International Judicial Sale of Ships was held immediately following the luncheon. The meeting was essentially preparation work for a draft Instrument and the Panel presentations on that subject to be held at the Conference in Beijing from October 14-19, 2012. The meeting was chaired by Henry Hai Li and the Rapporteur was Jonathan Lux.

3. *The Substantive Programme*

Following a cruise up the Oslo Fjord to the premises of the Classification Society, Det Norsk Veritas, on September 26th, a very interesting tour of their testing laboratories was undertaken with plenty of opportunities to ask questions. Following luncheon, a Seminar was held which had been organized by the NMLA. The Seminar, ably conducted by President Trine-Lise Wilhelmsen, featured the presentation of papers on a variety of topics such as Regulatory

challenges in the High Arctic, the Polar Code negotiations, the Northern Sea Route (Northeast passage) as a viable commercial alternative, Technology Outlook 2020, Shipping and the Environment, and the Maritime Lawyer in the Future.

4. *Social Programme*

Det Norske Veritas arranged a luncheon during the working sessions, and a splendid evening at its

restaurant where a delightful dinner and a magnificent view of the Fjord was arranged.

5. *Conclusion*

On behalf of all delegates, I express our gratitude for all of the arrangements that resulted in a highly successful three day event.

NIGEL H. FRAWLEY*

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

NEWS ON INTERIM GUIDANCE ON USE OF PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA

IMO REVISED INTERIM GUIDANCE TO SHIPOWNERS, SHIP OPERATORS AND SHIPMASTERS ON THE USE OF PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA

The Maritime Safety Committee, at its eighty-ninth session (11 to 20 May 2011), approved interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area.

Given the importance and urgent nature of the issue, and the need to further develop and promulgate detailed guidance and recommendations as soon as possible, the Committee approved and the Council authorized the convening of an intersessional meeting of the Maritime Security and Piracy Working Group (13 to 15 September 2011) to update the guidance.

The interim guidance was subsequently revised by the Maritime Safety Committee at its ninetieth session (16 to 25 May 2012) to take into account consequential amendments arising from the development of the interim guidance to private maritime security companies providing privately contracted armed

security personnel on board ships in the High Risk Area.

The Revised interim guidance has been published as an annex to the circular of the Maritime Safety Committee MSC.1/Circ.1405/Rev.2 of 25 May 2012.

IMO INTERIM GUIDANCE TO PRIVATE MARITIME SECURITY COMPANIES PROVIDING PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA

Following the high-level debate on the issue of privately contracted armed security personnel on board ships that took place at its ninetieth session, the Maritime Safety Committee agreed to also develop guidance to private maritime security companies to complement existing guidance, and to further assist policy development at the national level and facilitate greater harmonization of policies at the international level related to the issue of private armed security on board ships.

The Interim guidance has been published as an annex to the circular of the Maritime Safety Committee MSC.1/Circ.1443 of 25 May 2012.

NEWS ON THE ATHENS CONVENTION ON CARRIAGE OF PASSENGERS BY SEA

Although twenty five States are parties to the original Convention, adopted in 1974 and entered into force in 1989, its provisions, inter alia in respect of the limits of liability, were not favorably considered by the majority of maritime Nations as it appears from the fact that after its entry into force no important maritime nation, except Greece, acceded to it. That

entailed the adoption in 2002 of a Protocol by which significant amendments and additions were brought to the original text, including the change of the basis of the carrier's liability, that, while originally was based on fault, became strict in respect of claims not exceeding 150,000 SDRs, the increase of the limits of liability, the compulsory insurance of the carrier's

* Secretary General.

liability and a special procedure for the amendment of the limits.

However the hope that the 2002 Protocol would quickly enter into force and entail the adoption of the Convention, as amended, by a significant number of maritime nations proved to be too optimistic. The main reason consisted in the apparent difficulty of the insurance market to cover the liability of the carrier in case of major accidents due to war risks.

This problem was considered, on the initiative of the British and Norwegian Governments, by the IMO Legal Committee that on 19 October 2006 adopted the text of a Reservation that States could make concurrently with the accession to the 2002 Protocol, accompanied by Guidelines for the implementation of the Convention, as amended by the 2002 Protocol. But even that action of the IMO Legal Committee did not trigger the expected result, until when on 23 April 2009 the European Union adopted Regulation (EC) No.392/2009 on the Liability of Carriers of Passengers by Sea in the Event of Accidents. That Regulation in fact incorporates the Athens Convention as amended by the 2002 Protocol (except its articles 17 and 17bis on jurisdiction and recognition and enforcement) and the provisions of the IMO Guidelines.

Article 1 of the Regulation so provides:

Subject matter

1. This Regulation lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of:

- (a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (the Athens Convention) as set out in Annex I; and
- (b) the IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006 (the IMO Guidelines) as set out in Annex II.

Therefore both the terms of the Reservation and of the Guidelines have to be taken into consideration. The relationship between them is set out as follows in paragraph 1.13 of the Reservation:

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.

In order to make a complete assessment of the relationship between the Regulation, the Convention and the IMO Reservation and Guidelines it is also worth mentioning that the consolidated text of the Athens Convention and of its 2002 Protocol is annexed to the Regulation as Annex I under the title "Provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea relevant for the application of the Regulation".

Article 12 of the Regulation provides that the Regulation shall apply "from the date of entry into force of the Athens Convention for the Community, and in any case from no later than 31 December 2012". Two alternatives seem therefore to be possible: a) Entry into force of the Convention for the Community, such entry into force triggering also the application of the Regulation, and b) if the Convention will not enter into force by the end of 2012, the Regulation, which incorporates almost all the provisions of the Convention, will nevertheless enter into force at the end of 2012 and that will entail the application within the Community of the provisions of the Convention as Community law. Its scope of application will be as set out in its article 2 that so provides:

This Regulation shall apply to any international carriage within the meaning of point 9 of Article 1 of the Athens Convention and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, where:

- (a) the ship is flying the flag of or is registered in a Member State;
- (b) the contract of carriage has been made in a Member State; or
- (c) the place of departure or destination, according to the contract of carriage, is in a Member State.

Member States may apply this Regulation to all domestic sea-going voyages.

The above provisions are based on article 2(1) of the Convention, except that the reference to State Party has been replaced by a reference to a Member State (of the EU). Therefore, where none of the connecting factors enumerated in article 2 of the Regulation will exist, the Regulation will not apply, nor will the Convention apply, for none of the Member States will, it is assumed, have become a party to the Convention. This will be the case where the ship concerned does not fly the flag or is registered in a Member State, the contract of carriage has not been made in a Member State, nor is the place of departure or destination in a Member State.

The three alternative connecting factors on the basis of which the Regulation (and thus the relevant rules of the Convention) apply will be considered individually hereafter.

- (a) The flag the ship is flying is that of a Member State or the ship is registered in a Member State. The duality between State of registration and State of the flag, is conceivable in case of bareboat charter registration, in which event the ship is actually registered in the registers of two different States: the State of permanent registration and the State of the bareboat charterer. Reference to such a situation is made in Consideration 12 in the following terms:

(12) For the purposes of this Regulation, the expression 'or is registered in a Member State' should be considered to mean that the flag State for the purposes of bareboat charter-out

registration is either a Member State or a contracting party to the Athens Convention. Necessary steps should be taken by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.

Since what is relevant for the purposes of the carriage of passengers by sea is the operation of the ship and all matters concerning its safety, reference to the State of permanent registration appears inappropriate. In this connection it is significant that the 1986 U.N. Convention on Conditions for Registration of Ships in article 12 (4) so provides:

4. A State shall ensure that a ship bareboat chartered-in and flying its flag, pursuant to paragraphs 1 to 3 of this article, will be subject to its full jurisdiction and control.

Reference to the State of permanent registration is on the contrary appropriate in respect of mortgages and *hypothèques* as it has been done in article 16 of the 1993 Convention on Maritime Liens and Mortgages.

(b) The contract of carriage is made in a Member State. While the place where the contract is made is not a connecting factor in the Hague-Visby Rules, it has been considered that normally in respect of the carriage of passengers the place where the contract is made is that where the passenger has his domicile.

(c) The place of departure or destination according to the contract of carriage is in a Member State. International carriage is defined in article 1(9) with reference to the place of departure and the place of destination, while "carriage" is defined in article 1(8), with regard to the passenger and his cabin luggage, as the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation. The different terminology indicates that the places of departure and destination differ (or may differ) from the places of embarkation and

disembarkation and cover the whole period during which the carrier provides its services to the passenger. Where, for example, the carrier offers a package including a cruise in the Greek Islands and air transport from the place where the passenger is domiciled to Piraeus and then the return air transport, the places of departure and destination would be in the same State. However the rule pursuant to which the carriage is nevertheless international if there is an intermediate port of call in another State applies.

In addition to international carriage, the scope of application of the Convention, as amended by the 2002 Protocol and supplemented by Regulation (EC) No.393/2009, includes carriage of passengers within a single Member State when such carriage is made on board ships of Classes A and B under article 4 of Directive 98/18/EC. On the basis of the definitions of the four classes it appears that the ships engaged on domestic voyages that will be covered by the Convention will be those that are authorized to perform voyages in the course of which they may be more than 15 miles away from the line of the coast¹. Member States are, however, permitted to apply immediately the Regulation to all domestic seagoing voyages.

It is worth mentioning that the limits of liability of the carrier in case of death of or personal injury to passengers differs to some extent from that set out in the Convention as amended. Pursuant to the IMO Reservation Member States reserve the right and undertake to limit liability under article 3(1) and (2) of the Convention, in respect of death or personal injury caused by any of the risks enumerated in paragraph 2.2 of the Guidelines, such risks being the risks covered by war insurance², to the lower of the amounts of 250,000 SDRs in respect of each passenger on any distinct occasion and 340 million SDRs overall per ship. Since the Reservation then provides under paragraph 1.5 that it applies regardless of the basis of liability under article 3(1) or

¹ Article 4 of Directive 98/18/EC so provides:

Classes of passenger ships

1. Passenger ships are divided into the following classes according to the sea area in which they operate:

'Class A' means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.

'Class B' means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

'Class C' means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2.5 m significant wave height is smaller than 10% over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

'Class D' means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1.5 m significant wave height is smaller than 10% over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

² Such risks are the following:

- war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, 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.

(2) of the Convention and notwithstanding anything to the contrary in articles 4 or 7, the overall limit of 400,000 SDRs mentioned in article 7 does not apply in respect of death or personal injury caused by a war risk, the only limit *pro capite* being 250,000 SDRs. The practical effect of the Reservation will therefore be, where death or personal injury is caused by any of the risks referred to in paragraph 2.2. of the IMO Guidelines:

- a) to maintain the special regime adopted in article 3(1) in respect of death and personal injury caused by a shipping incident but to add to the individual limit of 250,000 SDRs a global limit of 340 million SDRs;
- b) to apply both limits also to death and personal injury not caused by a shipping incident reference to which is made in article 3(2), and
- c) to exclude the application of the limit

of 400,000 SDRs per passenger provided in article 7.

The limit *pro capite* would exceed the overall limit if the passengers dead or injured would be more than 1,360 while the global limit under article 7(1) of the LLMC Convention as amended by its 1996 Protocol corresponds to that indicated in the Reservation when a ship is authorized to carry 1942 passengers. Where the Reservation applies there may, therefore, be a conflict between the Athens Convention and the LLMC Convention as amended by the 1996 Protocol when a ship is authorized to carry less than 1942 passengers and the passengers dead or injured are more than 70% of the passengers the ship is authorized to carry.

FRANCESCO BERLINGIERI