

News under the Athens Sun – New Principles and Lost Opportunities of the Athens Convention 2002

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“What has been is what will be, and what has been done is what will be done; and there is nothing new under the sun.” Ecclesiastes 1, 9

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1 Introduction

A Diplomatic Conference is over. The texts are agreed, and the documents signed. The work by many people over many years has come to an end. One naturally asks: Was it all worth it? Did we achieve anything substantially new?

About a year ago, on 1 November, 2002, I had to ask myself such questions after the relatively successful International Conference on the Revision of the Athens Convention Relating to The Carriage of Passengers and their Luggage by Sea, 1974. The resulting Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, obviously did not change the world. But is it still fair to say that it means more to the maritime law community than yet another revision of limitation figures? Were there some lasting novelties?

The 1974 Convention established a very limited negligence-based liability for carriers of passengers in international trade:¹ The major new points of the 2002 Convention are listed below:

- *Liability without negligence* for the first SDR 250,000 per passenger of claims for death and personal injury if the incident relates to a “shipping incident” (an incident that could not have occurred in a land-based hotel).²
- *Compulsory insurance* for SDR 250,000 per passenger in respect of death and personal injury claims, with direct action and no policy defenses except willful misconduct.³
- *Unlimited liability* in respect of death and personal injury claims for states choosing so in respect of actions in their courts; the general rule is, however, a limit of liability of SDR 400,000 per passenger.⁴
- Up to a total of five years before claims are *time-barred* if the passenger did not know about the damage, *etc.*; typically in cases of whip lash in high speed craft.⁵
- About 25% increase of limits on *luggage claims*.⁶

¹ Athens Convention, 1974, article 3.

² Athens Convention, 2002, article 3.

³ Athens Convention, 2002, article 4bis.

⁴ Athens Convention, 2002, article 7.

⁵ Athens Convention, 2002, article 16, paragraph 3.

⁶ Compare article 8 of the Athens Convention, 1974, as revised by the Protocol to amend the Athens Convention Relating to the Carriage of Passengers and their Luggage By Sea (1990), and the same provision in the Athens Convention, 2002. The 1990 Athens Protocol never entered into force, but was used as a reference during the negotiations because it represented a compromise newer than the 1974 Convention. The unit of account had in any event been changed in the 1974 Athens Convention by the Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 (“SDR Protocol”), which would have complicated comparisons.

- A 10% increase of *deductibles*.⁷

The new Convention is not in force (although chances are that it will be in force by 2005⁸). This article therefore deals with the changes in legislative thinking in the Legal Committee of the IMO⁹ that are reflected in the work with the Convention. Which new principles were established, and which opportunities were lost, at this crossroads for international maritime liability law?

2 Mode of Work

In the years 1996-2001, when the new Athens Convention was negotiated, the style of the negotiations has changed considerably in the legal Committee of the IMO. The able chairmanship of Mr. Alfred Popp, QC, of Canada, which continued throughout the period, has had a significant positive effect. In addition, I would like to mention two other aspects:

First, the work is now definitively government directed.¹⁰ Unlike previous practice (and unlike some other UN bodies), the government representatives in the Legal Committee would hardly allocate valuable time to issues with few political overtones. Pressure groups are still present, but do not set the agenda; indeed, there were no passenger pressure groups accredited to the IMO at all during the negotiations. Not even the almost century long tradition of finalizing the harmonization proposal of Comité Maritime International by adopting a convention has been left much room on the agenda.¹¹ This change started already in the negotiations of the HNS Convention,¹² which were finalized in 1996.

Second, during the last decennium the Legal Committee has also benefited from the electronic revolution. Intersessional groups have been more effective by means of, *inter alia*, electronic mail, and the process has been more open and perspicuous by the publishing of drafts on the Internet.¹³

The Athens process has in this respect shown a new path which most likely will be followed in the future.¹⁴ The good part of it is that comments may be

⁷ *Ibid.*

⁸ See section 9, *infra*.

⁹ The International Maritime Organization (IMO) is an intergovernmental organization within the UN system.

¹⁰ Gaskell, Nicolas, *Decision Making and the Legal Committee of the International Maritime Organization*, in *Legislative Approaches in Maritime Law* (MarIus (Oslo 2001) No. 283) 41–91 at 53 *et seq.* take it for granted that the real key players are states.

¹¹ Gaskell, *l.c.*, at 59. see further on the work of CMI on international conventions, e.g., Griggs, Patrick J.S., *Uniformity of Maritime Law – a CMI Perspective*, in *Legislative Approaches in Maritime Law* (*supra*) 11–26. The projects he refers to at 22-23 are not IMO projects.

¹² International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

¹³ Materials are still available at the Athens web site “<http://folk.uio.no/erikro/WWW/corrgr/index.html>” (last visited 15 January 2004).

¹⁴ The dominating agenda item now is Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988

submitted throughout the entire negotiation process, even by non-participants in the negotiations. The bad part is that legal virtues in respect of draftsmanship and holistic approaches to problems will be left even less room.

3 The Really Global Maritime Liability Regime

In 1996, when the Athens negotiations started, there was a wide-spread feeling that what was needed was a unified approach to maritime liability.¹⁵ The general systems for limitation – in the maritime law jargon called the “global” limitation systems¹⁶ – were undermined by a number of exceptions,¹⁷ and did not address questions such as the basis of liability and insurance.

At this time, the long-lasting negotiations for an HNS Convention were just finished. One of the more difficult themes in these negotiations was the relationship between this specialized regime and the general regimes. But all attempts to establish a so-called “linkage” had failed.¹⁸

The Legal Committee then turned down a proposal to work to establish a comprehensive insurance and liability convention.¹⁹ Instead, one chose to study compulsory insurance. Later, this was divided into two projects, one on passenger liability and one on a general duty to maintain P&I (liability) insurance. The general project ended in a guideline that vessels should have P&I insurance;²⁰ a somewhat modest result considering that most vessels already have this kind of insurance. The passenger project ended in the revision of the Athens Convention, 1974, leading up to the Athens Convention, 2002. This project was very limited indeed, in that one chose not to undertake a full revision

relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol), *see* IMO document LEG 88/1. This agenda item is definitely driven by one government delegation (the US Delegation) and is supported by a website “<https://afls16.jag.af.mil/dscgi/ds.py/View/Collection-4966>” (last visited 16 January, 2004).

¹⁵ IMO document LEG 74/13, paragraph 51 *et seq.*

¹⁶ The main conventions are International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea-Going Vessels, 1924; International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957; and Convention on Limitation of Liability for Maritime Claims, 1976. The latter convention is usually referred to as the “LLMC”.

¹⁷ Two important exceptions were International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 and 1992; and the HNS Convention, 1996 (*supra*). In addition, the issue on the status of passenger claims and claims in respect of releases of bunker fuel oil were raised.

¹⁸ Linkage is IMO jargon for avoiding that more than one limitation fund has to be paid out in respect of one incident, *see* IMO document LEG 72/4/5 and LEG 73/INF.2. On how the different regimes work together, *see* the intersessional document WP/Ott./1, reproduced as Annex 1 to IMO document LEG 87/11/1.

¹⁹ After the stalemate reflected in IMO document LEG 76/12, paragraph 41, the matter was never pushed again. The strategy outlined in IMO document LEG 75/4/2, paragraphs 19 *et seq.* was pursued.

²⁰ IMO Assembly Resolution: Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims, IMO document A 21/Res.898. After this, the work on International Convention on Civil Liability for Oil Pollution Damage, 2001, started.

of the Athens Convention,²¹ and decided to refrain from making a thorough revision of even the texts considered.²²

It is perhaps understandable that the Legal Committee chose the path that would most expediently lead to the more politically necessary results at these crossroads. In particular, this is so when one knows that negotiations in the IMO will put a lid on all national initiatives, and that they have a tendency to drag out. Indeed, the combination of the national lid and the dragging out tendencies is that there is always an interest group wishing to attempt to prolong the discussions in order to preserve the status quo.

After the Athens Convention, the Legal Committee has moved on to discuss other issues less strongly linked with liability.²³ A comprehensive revision of maritime liability is therefore definitely a lost opportunity. This is, however, in itself a new principle that has been established.

4 Strict Liability

Ever since the first conventions to make maritime liability law uniform were agreed, the idea of strict liability has been suppressed.²⁴ When strict liability exceptionally has been accepted, it has been as a *quid pro quo* for effective limitation.²⁵ The Athens Convention represents a shift in thinking on this point. Here, strict liability has been established (for death and personal injury caused by typical shipping incidents).²⁶ Still, the limits for liability are high, and can even be dispensed with altogether if a State Party so desires.²⁷

There is no doubt that this approach to strict liability represents a breach with the traditions of maritime law conventions.

5 Grandfather Problem

A part of the standard trimmings of conventions for harmonizing maritime liability law has been the supersession clause, which has allowed States Parties to maintain their existing treaty obligations after ratifying a new convention.²⁸ The philosophy must have been to add to, and not to remove anything from, the *aquis* of such conventions, and perhaps also to facilitate entry into force by allowing ratifications without letting the old system disappear immediately. The

²¹ IMO document LEG 77/4/4, paragraph 1.

²² IMO document LEG 77/4/4, paragraph 6.

²³ IMO document LEG 88/1.

²⁴ See, e.g., International Convention for the Unification of Certain Rules of Law Relating to Collision between Vessels, 1910, article 2.

²⁵ See, e.g., The Bunkers Convention, 2001 (*supra*), fifth preambular paragraph.

²⁶ Athens Convention, 2002, article 3, paragraph 1.

²⁷ Athens Convention, 2002, article 7, paragraph 2.

²⁸ E.g., HNS Convention, 1996 (*supra*), article 42. See also Blanco-Bazan, Augustin, *Third Generations of Conventions*, in *Legislative Approaches in Maritime Law (supra)* 139–147.

result is that the old conventions – the grandfathers – are guaranteed a long, if not eternal, life.

The supersession clause might perhaps more rightly be called the non-supersession clause, because the point is that the old conventions are *not* superseded by the new. From a treaty law perspective, the new convention does not affect the old convention; it is just a way for two parties to the old convention to make special mutual arrangements.²⁹

The problems of the supersession clause are that the liability rules may not be the same for all ships involved in one incident, and indeed not for all passengers on board a ship. This depends on the nationality of the involved, which again determines which conventions are applicable. This is both unfair and complicated.

The Athens Convention, 2002, takes a new approach to this matter: There is no supersession clause. For the sake of clarity, a number of old conventions that must be denounced have even been listed.³⁰ It is likely that this will form a pattern for the future, at least when relatively rapid ratification is secured by other mechanisms, as in this case.³¹

It was much discussed in the fringes of the Legal Committee whether treaty law allowed that one convention required the denunciation of an earlier one. A basis on which the sovereignty of a state could be restricted so that it could not commit itself to denounce specified conventions was, however, never found. Indeed, there are precedents from maritime law on liability conventions on this point.³²

While the conventions used to include a supersession clause, they usually barred for new ratifications of a convention while a revision had been agreed.³³ Such a clause is not included in the Athens Convention, 2002. It was included in the draft prepared by the Legal Committee,³⁴ but it was omitted by a clerical error in the draft sent to the Diplomatic Conference.³⁵ At the Diplomatic Conference, no delegation found the issue sufficiently important to raise it.

6 Limitation

A salient part of conventions on maritime liability law has always been the limitation of liability. The intention has been to maintain the idea that ship owners shall not have to answer fully for their liabilities, an idea that naturally has been challenged from time to time, and to agree on uniform limits.

²⁹ Vienna Convention on the Law of Treaties, 1969, article 30, paragraph 4 and Blanco-Bazan, *l.c.*, at 140.

³⁰ Athens Convention, 2002, article 17 of the Final Clauses.

³¹ See section 9, *infra*.

³² E.g. International Convention on Civil Liability for Oil Pollution Damage, 1992, article 28 of the Final Clauses, paragraph 6.

³³ Athens Convention, 1974, article 26, paragraph 3.

³⁴ IMO Document LEG 83/14, paragraph 89.

³⁵ IMO document LEG/CONF.13/3, article 22.

In the Athens Convention, liability is limited to a specified maximum amount per passenger, per vehicle, *etc.*³⁶ The law for calculation of damages is not harmonized.

These limitation rules represented problems in two respects during the negotiations.

First, it was difficult for some states to accept that liability for death and personal injury should be limited at all, as a point of principle. Other states maintained that limitation was particularly necessary because of the exorbitant damages for death and personal injuries awarded in some jurisdictions and the enormous aggregate liability amounts of a passenger vessel of 3,000 passengers or more.

Second, it was virtually impossible to arrive at a level of limitation acceptable to all, without regard to the level of compensation in the state they represented (which again has some correlation with the standard of living and the social security system in that state) and their general attitude to the concept of limitation of liability.

The compromise was to set fairly high levels of liability, and, in addition, allow States Parties to set higher limits, or indeed dispense with the limit altogether, in their national law.³⁷

High limits were necessary in order to attract the Western European states, which were taking a leading position in the negotiations. Although the effect of the high limits would be that passenger claims would not be effectively limited in, *e.g.*, developing countries with a low standard of living, the lack of effective limitation in these states is perhaps not very important. The international insurance industry can manage those claims anyway – if these states will feel the need to become States Parties.

The option to dispense with the limit was first of all necessary for the default limits to be set at a level that was not even higher. In addition, it would make it possible for states that have not ratified maritime liability conventions for years – *i.e.*, the United States of America – to ratify.

Even if the Convention after this compromise does not create uniformity in respect of limitation levels, it still accomplishes a mission: It establishes a uniform system for insurance and a basis of liability, and a uniform framework for limitation. This is probably as far as one can go in harmonization at this time if the Convention is to obtain widespread acceptance. And, after all, it is far better that states are parties to the uniform system, albeit with separate national or regional limits, than that they are not parties to any international liability convention at all. My guess is that such flexibility in respect of liability as introduced in the Athens Convention, 2002, has come to last.

The forerunner for the Athens option to dispense with limits of liability in national law is found in the 1996 revision of the 1976 global limitation convention,³⁸ where the corresponding clause was accepted almost without

³⁶ Athens Convention, 2002, articles 7 and 8.

³⁷ Athens Convention, 2002, article 7, paragraphs 1 and 2.

³⁸ Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Protocol), article 6 (amending article 15 of the 1976 LLMC (*supra*)).

debate in the Legal Committee immediately after the Estonia incident.³⁹ This Convention includes limitation rules for passenger claims that quite closely correspond to those of the Athens Convention.⁴⁰ If the limitation amounts of the two Conventions are updated simultaneously (which is not always the case), this part of the global limitation convention is important mainly⁴¹ when the Athens convention does not apply because the relevant state has not ratified it.

It is likely that a state that accepts the Athens Convention, 2002, will adopt corresponding limits, if any, under the global limitation regime. The policy considerations are very similar. In addition, the prolonged time bar in the Athens Convention, 2002,⁴² will make global limitation unworkable, because a global fund can hardly be distributed before the limitation period has expired. The *per capita* limitation of the Athens Convention does not create the same problem.

7 Insurability

In maritime law, liability is closely linked to insurance. A great deal of the merchant ships in international trade is a member of a protection and indemnity (P&I) insurance club,⁴³ which effectively pools its liabilities in an ingenious international pooling system.⁴⁴ The P&I system is again used to justify harmonization of laws and limitation, as it is maintained that the pooling system will become unacceptable to ship owners if the risks vary too much from state to state. Until now, the variations have been acceptable, even if the cover includes, e.g. , passenger liability in the United States.

Because of this pivotal role of insurance, the Diplomatic Conferences have usually asked the insurance industry for advice on how great limits were acceptable, and followed that advice.⁴⁵ In the Athens Convention, 2002, such advice is however disregarded on at least three points:

³⁹ IMO document LEG 72/9 paragraphs 90-93.

⁴⁰ Athens Convention, 2002, article 7, paragraph 1, corresponds to the LLMC Protocol, 1996, article 4 (amending article 7, paragraph 1 of the 1976 LLMC (*supra*)). The limitation amount of the LLMC Protocol, 1996 (*supra*), equals the limitation amount of the Athens Protocol, 1990 (*supra*), article II, paragraph 1 (amending article 7 of the Athens Convention, 1974).

⁴¹ While the maximum under the LLMC system is the limitation amount multiplied by the number of passengers the ship legally can carry, the maximum under the Athens system is the limitation amount multiplied by the number of passengers actually on board. Hence, there is a difference if the vessel has too many passengers on board. The 1976 LLMC has in addition an overall maximum amount.

⁴² Athens Convention, 2002, article 16, paragraph 3.

⁴³ IMO document LEG 76/WP.1 and Nordström, Erik, *Maritime Safety. The Role of Cargo Owners/ Shippers and Marine Insurers* (Stockholm: The Swedish Maritime Administration) at 13. It is often said that more than 90 or even 95% of vessels in international trade have P&I insurance.

⁴⁴ IMO document LEG/CONF.13/17 and Røsæg, Erik, *The Impact of Insurance Practices on Liability Conventions*, in *Legislative Approaches in Maritime Law* (*supra*) 115-138 at 118 *et seq.*

⁴⁵ Røsæg, *l.c.*

First, the overall liability exposure in the Athens Convention, 2002, is far greater than the P&I clubs accepted.⁴⁶ If all passengers of a 3,000 passenger vessel are awarded the full limitation amount, this will total SDR 1.2 billion. Some passenger vessels are even larger, and the exposure may be more than doubled if the incident involves a collision.

Formally, the P&I clubs' cover is limited to USD 4.25 billion, and is reinsured up to well over USD 2 billion, *i.e.*, well above the likely exposure.⁴⁷ However, these limits may be revised if no effective limitation system is in place.

Second, the direct action exposure – where the passenger can sue the insurer directly without suing the carrier – is also too high, in the clubs' view. The limit is here SDR 250,000 per passenger, or SDR 0.75 billion for a 3,000 passenger vessel. The clubs had suggested 40% of this amount.⁴⁸

Third, the terrorism exposure is greater than what the clubs – or their reinsurers – presently can cover. There is an exception in the strict liability for damage caused by terrorism, and negligence liability, of course, does not include liability for acts of terrorists.⁴⁹ However, a carrier may be liable under the Convention for his failure to prevent terrorist acts.⁵⁰ This risk is, maintains the clubs, uninsurable.⁵¹

The philosophy behind this defiance to the clubs appears to be a belief that the Convention after all will not represent a real threat to the P&I system, because the insurance market will adjust. In particular, this is so when insurance is made compulsory, so that a seller's market is created, *i.e.* a market attractive to the sellers of insurance. In respect of the direct action exposure, some delegates doubted that direct action actually would increase payments from P&I insurers.⁵²

It remains to be seen whether the market in fact will be able to provide the cover required by the Convention.⁵³ The clubs will in any event reorganize their passenger exposure, as the majority of ship owners – independently of the Athens Convention – have been concerned about the exposure in respect of the passenger ship minority in the clubs. The news this far is, however, that the Legal Committee now – probably for the first time – has not taken the clubs' advice as to what is insurable.

⁴⁶ IMO document LEG/CONF.13/11, paragraph 7.

⁴⁷ See footnote 44, *supra*.

⁴⁸ IMO document LEG/CONF.13/11, paragraphs 2–5.

⁴⁹ Athens Convention, 2001, article 3, paragraph 1(a) on strict liability and article 3, paragraphs 1 *in fine*, 2 and 5(b) on negligence liability.

⁵⁰ This follows directly from the negligence rule and from the words “wholly caused” in the strict rule.

⁵¹ IMO documents LEG/CONF.13/11, paragraphs 12–14 and LEG/CONF.13/18, paragraph 5. Some actual P&I and reinsurance clauses are published at the Athens web site (*supra*).

⁵² Røsæg, *l.c.* at 134.

⁵³ The media debate and some presentations from insurers are published at the Athens web site (*supra*).

8 Inflation and Exchange Rate Fluctuations

The harmonization of laws requires a minimum of consistency over time, or the standard would be changed faster than states could implement it. In respect of limitation of liability, this represents a particular problem when limitation amounts are exposed to inflation. Indeed, some of the nominal increases in limitation amounts brought about in new conventions were already deflated to the old values when the convention had entered into force.⁵⁴

A similar problem exists in relation to exchange rates. Whatever is used as a unit of account when setting the limits, its value in relation to the currencies used to calculate the damages will fluctuate. If limitation amounts are fixed in alternative currencies, these currencies may be used as currencies of account, but their value will then fluctuate in relation to each other, and no uniformity will be achieved.

The use of SDR does not resolve this problem. SDR is a weighed average of some major currencies, defined from time to time by the International Monetary Fund for their own purposes.⁵⁵ It is more stable over time and exposed to smaller currency fluctuations than individual currencies. But the inflation problem and the exchange rate problems are far from completely eliminated.

The Athens Convention, like all new limitation of liability conventions in this area of law, includes a proviso that a state that does not accept SDR may use an alternative method of calculation.⁵⁶ This clause is a remnant from the cold war, when SDR was controversial as part of the International Monetary Fund system. It is not known that any state insists on this clause today, and it is not in use. However, the clause has been carried over from old drafts, because no state suggested that the Diplomatic Conference or the Legal Committee should spend time considering the clause.

The problems of determining limitation amounts in a meaningful way become even worse when one takes into account that inflation varies from state to state. The following table demonstrates how differently the general inflation has developed during the lifetime of the Athens Protocol, 1990, from 1990-2002:⁵⁷

World	308 %
Developed Countries	127 %
Developing Countries	992 %

In addition, there may be special factors influencing the level of liability in particular states; one could call it the inflation in the particular area relevant to limitation amounts. Such factors are the recognition of additional losses as compensable and changes in the social security systems, which brings, e.g.,

⁵⁴ Selvig, Erling, *An Introduction to the 1976 Convention*, in *The Limitation of Shipowners' Liability: The New Law* (London 1986) 3–17 at 15.

⁵⁵ For detailed explanations, *see* the links at the Athens web site (*supra*).

⁵⁶ Athens Convention, 2002, article 9, paragraph 2.

⁵⁷ IMO document LEG/CONF.13/8, table 1.

hospitalization costs inside or outside the tort liability system.⁵⁸ In many states, e.g., Norway, the average compensation for personal injuries has increased more than by the general inflation factor.⁵⁹

This certainly provided little guidance when limitation amounts were to be fixed at the Diplomatic Conference in 2002. Indeed, the limitation amount for death and personal injury claims was increased more than what could be justified by the inflation in Western Europe, while the limits for property damage showed a smaller increase.⁶⁰

As inflation varies greatly from state to state, the fluctuations of the exchange rates also vary. The effects of these fluctuations depend on the currency in which the payor (the carrier or his club) and the payee (claimant), respectively, receive their income. While the claimant often incurs losses in his local currency, the income of the payor may in shipping very well be in foreign currency. Hence, these fluctuations make it impossible to fix a limitation amount that can represent stability over time for anyone anywhere.⁶¹ The Athens Convention, 2002, does not address this problem.

While the inflation and exchange rate problems make the fixing and revising of limitation amounts a rather irrational process, the cumulative effect of the two factors makes this even worse. They are not independent of each other, as, e.g., the currency of a state with high inflation naturally will be unattractive for investors and therefore not do well in the foreign exchange market. However, both factors may very well work to the disadvantage of a particular payor or payee, so that a fixed limitation amount is of no benefit to him.

In Norway, the exchange fluctuations to some extent have neutralized inflation.⁶² If one asks how much the limitation amounts of the Athens Protocol, 1990, would have to be increased for a Norwegian claimant to obtain the same value in Norwegian kroner in 2002 as in 1990, the answer is 112%. However, if one asks how much the payor would have to spend in Norwegian kroner to buy the 1990 limitation amounts in SDR adjusted for world inflation, the answer is 362%. As both questions asked here are relevant, the conclusion that fixing of limitation amounts is an irrational process is strengthened.

Unfortunately, the Athens Convention, 2002, does not offer a good solution to these problems. There are fixed limitation amounts. No attempts were made to justify why exactly those figures were right in 2002, and would be right in the lifetime of the Convention. The failure to address these problems may be seen as a lost opportunity. However, it may be that there is no way of fixing limitation amounts so that they provide a set level of compensation without regard to inflation and exchange rate fluctuations.

There are, however, two clauses in the Athens Convention, 2002, that can alleviate the inflation problem. First, there is a general revision clause – which

⁵⁸ IMO document LEG/CONF.13/8, paragraphs 5 *et seq.*

⁵⁹ *Ibid.*

⁶⁰ See footnote 6, *supra*.

⁶¹ IMO document LEG/CONF.13/8, paragraph 7.

⁶² See to the following Røsæg, Erik, *Inflation etc. in relation to the Athens limitation amounts* “<http://folk.uio.no/erikro/WWW/corrgr/insurance/inflation.pdf>” (last visited 16 January, 2004).

does not say more than that the Convention may be revised.⁶³ And second, there is a tacit amendment procedure for adjusting limitation amounts for inflation, within a quite limited framework.⁶⁴

The tacit amendment procedure has been included in several liability conventions, and has been used once.⁶⁵ This procedure allows the adoption of amendments by a majority vote, and therefore resolves some of the grandfather problems discussed above⁶⁶ within its scope.

After this, the real safety valve when inflation and exchange rate fluctuations have undesired effects on the fixed limitation amounts is the option to nationally or regionally increase or dispense with limitation amounts altogether. This option applies only to the limitation amount for claims in respect of death and personal injury to passengers. By including this clause, the Athens Convention has included a new mechanism – a safety valve – that could give fixed limitation amounts another chance.

9 Relationship to the European Community

In the Legal Committee of the IMO, Member States of the European Community act independently, and the European Community – represented by the European Commission – has an observer status only. This reflects the internal organization of the European Community, where maritime law generally falls outside the current competence of the Community.⁶⁷

During the Diplomatic Conference on the Bunkers Convention, 2001, the question arose as to whether Member States had full competence in respect of all provisions in the draft Convention. The issues were, however, not resolved and not reflected in the final outcome of the Conference due to time constraints. The first time such issues were resolved at an IMO Diplomatic Conference was therefore at the Diplomatic Conference of the Athens Convention, 2002.

There were two issues.⁶⁸ One concerned the competence as between the Community and individual Member States to negotiate and ratify the Convention. The other issue concerned harmonization of the Convention with Community law. In both issues it is important to identify a possible overlap between the Convention and Community law; partly to determine where harmonization is desirable from a Community point of view, and partly because Community competence exists where there is Community legislation. (This does

⁶³ Athens Convention, 2002, article 22 of the Final Clauses. The article would have made more sense if a paragraph such as the paragraph discussed at footnote 33 (*supra*) had been included.

⁶⁴ Athens Convention, 2002, article 23.

⁶⁵ Karan, Hakan, *Revising Liability Limits in International Maritime Conventions: A Turkish Perspective*, in 34 *Journal of Maritime Law and Commerce* (Baltimore 2003) 615–628 at 626.

⁶⁶ See section 5, *supra*.

⁶⁷ Power, Vincent, *EC Shipping Law* (2nd ed., London 1998) at 99 *et seq.*

⁶⁸ IMO document LEG/CONF.13/7.

not mean, however, that there necessarily is a need for harmonization where there is competence and *vice versa*.)

The overlap that was pointed out concerned the jurisdiction and enforcement of judgements, as there was a Community Regulation on the matter.⁶⁹ In addition, there was an overlap in respect of insolvency, because the Athens Convention establishes a privilege for insurance money in the carrier's bankruptcy,⁷⁰ an issue which is also addressed in a Community Regulation as far as choice of law is concerned.⁷¹ Also the liability provisions of the package travel directive and the Athens Convention overlap to some extent.⁷² However, these last instances of overlap were not examined in the Athens negotiations.

The harmonization attempts of the Community were decisive for the outcome in certain jurisdiction issues.⁷³ However, the more remarkable result is a clause that explicitly allows States Parties to recognize judgements to a greater extent than required by the Athens Convention.⁷⁴ Obviously, the Convention would not have prevented this even without the clause. When the European Community insisted on stating this explicitly, it must be seen as a political marking.

The Athens Convention actually requires recognition and enforcement to a *greater* extent than the corresponding Community law, as there is no general exception for *l'ordre public*.⁷⁵ This point was not made in the negotiations, presumably also for political reasons.

The competence questions in the negotiations were, of course, resolved internally by the Member States. In fact, they coordinated their activities beyond the area of Community law. The competence questions in respect of ratification were resolved by a separate article.⁷⁶ It provides that the European Community can ratify the Protocol that creates the Convention, and exercise the rights of States Parties instead of the Member States when there is Community competence.

When the Community ratifies, its obligations are – by express provision – limited by its competence.⁷⁷ This means that the Community does not answer for the implementation of the Convention in all Member States. However, it apparently means that the Community is responsible for the recognition and enforcement of judgements based on the Athens Convention, 2002, in all

⁶⁹ Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters.

⁷⁰ Athens Convention, 2002, article 4bis, paragraph 11.

⁷¹ Council Regulation (EC) No 1346/2000 on Insolvency Proceedings, article 4.

⁷² Compare Council Directive (90/314/EEC) on Package Travel, Package Holidays and Package Tours, article 5, and Athens Convention, 2002, article 3.

⁷³ IMO document LEG 83/14, paragraphs 62-68 on the so-called fifth jurisdiction.

⁷⁴ Athens Convention, 2002, article 17bis, paragraph 3.

⁷⁵ Council Regulation (EC) No 44/2001 (*supra*), article 34. There is, however, an exception for "fraud" in article 17bis, paragraph 2 of the 2002 Athens Convention.

⁷⁶ Athens Convention, 2002, article 19 of the Final Clauses. Remarkably, no attempts were made to coordinate this article with article 18 of the Final Clauses, which deal with the Hong Kong issues.

⁷⁷ *Ibid.*, paragraph 1.

Member States (except Denmark⁷⁸) even if the Member State is not a State Party to the Athens Convention. This is no problem if the Athens judgement is from a Member State, because the recognition and enforcement obligation then already follows from Community law.⁷⁹ However, the Community may have a problem if not all Member States ratify. Similar problems may arise in respect of the other overlapping areas indicated above.

Although the obligations of the Community are almost as if it had only ratified the part of the Convention that deals with matters over which it has competence, there is no corresponding exception for Member States. If they ratify, they commit themselves to implement the entire Convention within their jurisdiction. This means that they cannot ratify unless the Community has ratified first; only then they can be sure that the jurisdiction and enforcement provisions (and other matters within Community competence) can be implemented. Also, internal Community law requires that the Member States wait for the Community; they have no competence to enter into international agreements alone in areas where the Community has competence.⁸⁰

It is for the Community to describe in general terms which issues that may arise in relation to the Athens Convention that fall within the Community competence, and which fall outside.⁸¹ It is unlikely that a possible conflict on the extent of the competence will be raised, e.g., when decisions shall be made by a vote, neither by a Member State, the Community nor a non-member State, but the clarification of such issues may take some time. The only voting situation foreseen in the Athens Convention is however voting on increases of the limitation amounts under the tacit amendment procedure.⁸² This issue clearly falls outside the present Community competence.

One could ask why the competence questions of the Community could not be resolved internally. This is the general approach in the law of treaties.⁸³ There is, however, a point in Community law that their internal distribution of powers must be reflected externally.⁸⁴ Only when this is not possible, the Member States could and should represent Community interests.⁸⁵ Luckily, there are no other claims for similar split representation.⁸⁶

⁷⁸ Denmark is in a special position due to its reservations to the EU Treaty, *see* Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts - Protocol Annexed to the Treaty on European Union and to the Treaty Establishing the European Community - Protocol on the Position of Denmark (OJ C 340, 10/11/1997 p. 101 *et seq.*), article 1, and Council Regulation (EC) No 44/2001 (*supra*), article 1, paragraph 3.

⁷⁹ Council Regulation (EC) No 44/2001 (*supra*).

⁸⁰ *See, e.g.*, ECJ Opinion 1/94, [1994] ECR I-5267 at I-5411 *et seq.*

⁸¹ Athens Convention, 2002, article 19 of the Final Clauses, paragraph 4.

⁸² Athens Convention, 2002, article 23, paragraph 5.

⁸³ Vienna Convention on the Law of Treaties, 1969, articles 6 *et seq.*

⁸⁴ *See, e.g.*, ECJ Opinion 2/91, [1991] ECR I-1061 at I-1076 *et seq.*

⁸⁵ *Ibid.*, at I-1083.

⁸⁶ Hong Kong has however a delegation in addition to the delegation of China for historical reasons, and has the status of an Associated Member of the IMO.

The Athens Convention will certainly form precedence that the European Communities can ratify an IMO instrument, and perhaps also form precedence for the conditions for such ratification.⁸⁷ The European Community may eventually obtain status as a delegation (as opposed to being an observer), but this issue was not raised at this crossroad.

Even more important than these legal issues relating to Community law is the political implications of Community involvement. Before the Diplomatic Conference, the European Commission announced interest in passenger liability rules.⁸⁸ It then became important for some states to rapidly conclude a new Convention acceptable to the Community, so that a European regional solution could be avoided, and the more world-wide solutions of the IMO could be preserved. It is also possible that some Member States preferred an IMO Convention to avoid Community legislation in this field, because Community legislation would have implied that the Community would have gained competence in the field of maritime liability.⁸⁹ In avoiding this, they prevented European regional solutions not only in respect of the Athens Convention, but also in respect of future instruments in the same field of law.

Also after the Convention has been concluded, the Community plays an important role by keeping the issue on the agenda and promoting ratifications.⁹⁰ Because of the Community involvement, it is likely that the Athens Convention will receive the sufficient number of ratifications in 2005 at the latest, and consequently enter into force no later than 2006.

The Community role as a catalyst has been important also in a number of other Conventions on maritime liability.⁹¹ By the Athens Convention, the new pattern has been well established.

⁸⁷ A Conference Resolution does, however, call for a further study on this issue, *see* IMO document LEG/CONF.13/22.

⁸⁸ Communication from the Commission on the Enhanced Safety of Passenger Ships in the Community (COM(2002) 158 final), chapter 4.

⁸⁹ ECJ Opinion 1/94 (*supra*) at I-5411 *et seq.*

⁹⁰ Proposal for a Council Decision Concerning the Conclusion by the European Community of the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (COM(2003) 375 final).

⁹¹ Council Decision Authorising the Member States, in the Interest of the Community, to Sign, Ratify or Accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) (2002/762/EC) and Council Decision Authorising the Member States, in the Interest of the Community, to Ratify or Accede to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention) (2002/971/EC).

10 Simplification of Documentation

The basic control mechanism for the compulsory insurance system introduced by the Athens Convention, 2002, is similar to the system introduced in 1969 regarding compulsory insurance for oil tankers: Each ship must have a certificate issued by a competent public authority on board, certifying that the insurance is in order.⁹²

The certificate should be made available for port states on request.⁹³ The inspection is rather cumbersome, because it generally in practice requires a visit on board.

When a certificate shall be issued, the following procedure is required:

- The P&I club couriers a “blue card” – a statement that the vessel is insured – to the relevant public authority.
- The public authority issues a certificate on the basis of the blue card.
- The blue card is couriered to the vessel, directly or via the P&I club.

This procedure is rather cumbersome, in particular when the club, the government and the vessel usually are located in different states.⁹⁴ Because the insurers will not commit themselves for more than a year, the process must be repeated every year. It is said that each P&I club needs one employee to keep track of the certificates alone for tank vessels.

If the certificate is not available, the ship will be detained. It is therefore of the outmost importance that there are no problems in the issuing routines. It is said that more of these detentions are related to problems with the certificate than to problems with the insurance itself.

It is obvious that the routines could be simplified. The Athens Convention, 2002, opens the way for two important simplifications:

First, electronic certificates may be recognized by port states.⁹⁵ That simplifies the issue of certificates. It also makes it possible for a port state to fulfill its obligations to inspect vessels regarding insurance by checking a database, without visiting the vessel.⁹⁶ However, a port state may still require a paper certificate.⁹⁷ In some parts of the world, paper certificates will therefore still be important.

Second, states may authorize insurers or a third party to issue certificates rather than putting a government stamp on the individual blue cards they issue.⁹⁸

⁹² Compare Athens Convention, 2002, article 4bis and CLC, 1969 (*supra*), article VII.

⁹³ Athens Convention, 2002, article 4bis, paragraph 13.

⁹⁴ See in this direction IMO document LEG/CONF.12/9, paragraph 7.

⁹⁵ Athens Convention, 2002, article 4bis, paragraph 13.

⁹⁶ An example of a database that may be utilized for this purpose is the Equasis database, “<http://www.equasis.org>” (last visited 16 January, 2004).

⁹⁷ Athens Convention, 2002, article 4bis, paragraph 14.

⁹⁸ Athens Convention, 2002, article 4bis, paragraph 3.

A similar system has worked well in other contexts.⁹⁹ However, the P&I clubs have repeatedly maintained, although not in writing, that they would not like to utilize this option. It remains to be seen if their customers will accept the upkeep of the more cumbersome older procedure in the long run.

These simplifications were first agreed on during the Athens negotiations.¹⁰⁰ At some stage, it was decided that the Bunkers Convention should go to a Diplomatic Conference first, and the clauses were therefore included in that Convention for the first time.¹⁰¹ Still, I feel it is right to say that this is a new principle of the Athens Convention.

Older conventions that require insurance certificates do not include similar provisions.¹⁰² It is, however, likely that electronic certificates gradually will take over in practice also in these conventions. Arguably, the States Parties are also free to delegate their authority to issue certificates to whomever they wish, including insurers.¹⁰³ If this is correct (and I think it is), the news of the Athens/Bunkers Conventions is more the ideas than the establishment of the legal bases.

11 Insurance Quality

Although claims under the existing international maritime compulsory insurance regimes have always been paid out when well-founded, there is a growing concern that an insurer may default. It is for the state or party issuing the certificate – or authorizing an insurer to do so – to make sure that the insurer is of good financial standing.¹⁰⁴ The scrutiny is, however, quite superficial in many states. And even if the existence of sufficient funds is ascertained, the question of whether the funds are available in a relevant jurisdiction is hardly ever addressed.¹⁰⁵

The Athens Convention does not include procedures to ensure that the financial security is of a high standard. However, there is a new provision that invites for international cooperation.¹⁰⁶ The idea appears to be that procedures for the scrutiny of insurers shall be developed outside the Convention. As far as the Convention is concerned, one missed the opportunity to develop a system.

In connection with the implementation of the HNS Convention, such a system has been outlined. Basically, the IOPC Fund shall act as an information hub regarding the assessment of insurers made by different governments.¹⁰⁷ A

⁹⁹ See, e.g., International Convention for the Safety of Life at Sea (SOLAS), Regulation I-6.

¹⁰⁰ IMO documents LEG 76/12, paragraph 33 and LEG 77/4/4, paragraphs 13–15.

¹⁰¹ IMO document LEG 80/11, paragraphs 124 and 133.

¹⁰² See, e.g., CLC, 1992, and the HNS Convention, 1996 (*supra*).

¹⁰³ IMO document LEG 87/11, paragraph 12.

¹⁰⁴ Athens Convention, 2002, article 4bis, paragraphs 2 and 9.

¹⁰⁵ See IMO document LEG 87/11/1, annex 2, which reproduces the intersessional document WP/Ott./2.

¹⁰⁶ Athens Convention, 2002, article 4bis, paragraph 8.

¹⁰⁷ IMO document LEG 87/11, paragraph 12.

similar system can be developed for the Athens Convention, provided a government, the IOPC Fund or the IMO will play the role as an information hub.

12 New Convention by Protocol

The Athens Convention, 2002, was never adopted at a Diplomatic Conference. The convention is created by a Protocol to the Athens Convention, 1974. The Athens Convention, 2002, as opposed to an amended version of the Convention of 1974, is created by a specific provision of the Protocol.¹⁰⁸ The new Convention consists of the amended substantive articles of the 1974 Convention together with the final clauses of the 2002 Protocol.

This technique was also used by the Protocols to the CLC and Fund Conventions, 1992,¹⁰⁹ but it was then thought not to create a precedent. Therefore, the draft to the Diplomatic Conference on the Athens Convention in 2002 included a traditional Protocol only.¹¹⁰ The idea was to consolidate the 2002 Protocol and the 1974 Convention informally, without final clauses.¹¹¹

It is obviously advantageous to have a handy, comprehensive and officially consolidated text like the Athens Convention, 2002. However, formally the result looks somewhat awkward. Within the consolidated Convention, there are several references to “this Protocol”¹¹² and even to the “Convention as revised by this Protocol”.¹¹³ And there are two sets of articles 17–22 in the consolidated Convention.¹¹⁴

At least the latter problem could have been avoided by leaving some article numbers blank in the Protocol. The reason why the drafting was not better in the Athens Convention, 2002, is that the entire drafting had to be carried out during the last few days of the Diplomatic Conference itself.¹¹⁵ Before the Conference, the idea of producing a text like the Athens Convention, 2002, had been discussed intersessionally, but was abolished. However, at the Diplomatic Conference the insistence of one delegation – the United Kingdom delegation – made it necessary to change horses at the last minute.

The reason for the insistence was that it was felt like an anomaly that the Protocol discussed at the Diplomatic Conference was a Protocol to the Athens

¹⁰⁸ Athens Protocol, 2002, article 16, which adds a new article 22bis to the 1974 Athens Convention.

¹⁰⁹ CLC, 1992 (*supra*), article XIIter and Fund Convention, 1992, article 36quinquies.

¹¹⁰ IMO document LEG/CONF.13/4.

¹¹¹ IMO document LEG/CONF.13/5.

¹¹² *See, e.g.*, Athens Convention, 2002 article 18, paragraph 1 of the Final Clauses. By a drafting error, also, article 17bis, paragraph 3 of the substantive clauses refers to “this Protocol.”

¹¹³ *See, e.g.*, Athens Convention, 2002 article 23, paragraph 1 of the Final Clauses.

¹¹⁴ Also the CLC and Fund Conventions, 2002 (*supra*), have similar shortcomings in their drafting. The CLC is somewhat better, because the substantive clauses, unlike the new final clauses, are numbered by Roman numbers.

¹¹⁵ LEG/CONF.13/CW/WP.9 on this revision was issued 29 October, 2002, while the Convention was finalized 31 October, 2002.

Convention, 1974, at the same time as the Protocol called for the denunciation of that Convention.¹¹⁶ However, there is nothing illogical in this, because the 1974 Convention continues to exist as a text, and can be referred to as such. In any event, there are precedents for such clauses.¹¹⁷ And if there had been problems with the clauses, they would not have been resolved by letting the Protocol create something that looks like a convention; then nothing short of a real, new convention would do.

It is possible that it was found particularly problematic that the Protocol positively requires the denunciation of the original Convention,¹¹⁸ and not only allows such denunciation, as has until now been the practice.¹¹⁹ However, if a Protocol to a Convention is not an anomaly if all States Parties to the Convention denounce it at their own initiative – and that may very well happen – I cannot understand why it should become an anomaly just because the states are required to do the same thing. The relationship between the Convention and the Protocol would be the same in both situations. It would perhaps have made some sense if it was made a condition for the Protocol that the original Convention was in force, but neither the old nor the new practice will prevent that the original Convention is denounced by all its States Parties.

Because of this, I do not find the drafting techniques of the Athens Convention, 2002 particularly meaningful or helpful. I would hope that they do not create a precedent, but I am afraid they will be considered in this way.

One might think that the lesson from the Athens Diplomatic Conference would be to get around the drafting problems by negotiating completely new conventions rather than protocols. However, there is a psychological side to this. By using the format of a Protocol, one demonstrates the willingness to maintain the tradition and the existing uniformity, but for a few adjustments.¹²⁰ And on the other hand, it is easier to limit the scope of the deliberations when not a complete text of a Convention is up for discussion, but only some limited proposals for amendments. The scope of the discussions can thus be better managed in the context of a protocol than in the context of a full convention. Therefore, it is likely that the format of Protocols will be used also in the future where appropriate.

One peculiarity in relation to the use of Protocols, is that the European Community was given the right to ratify the Protocol,¹²¹ while it never had a corresponding right to ratify the original 1974 Convention. There is no rule in international law preventing this. One may, of course, still maintain that it is

¹¹⁶ *Ibid.*, paragraph 3.

¹¹⁷ Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, article 1, and the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Protocol, 1992), article 27. A much used reference book, Blix, Hans and Emerson, Jirina H (ed.) *The Treat Maker's Handbook* (Dobbs Ferry, N.Y., 1973), does, however, not include more relevant model clauses.

¹¹⁸ Athens Convention, 2002, article 17 of the Final Clauses, paragraph 5.

¹¹⁹ Fund Protocol, 1992 (*supra*), article 31, is, however, one exception.

¹²⁰ See section 3, *supra*, on the limited scope of the revision in 2002.

¹²¹ See section 9, *supra*.

somehow illogical that the Community can sign the amendment Protocol without signing what was amended. However, I do not know of any such rule of logic, at least not with the force of law.

13 Punitive Damages

A little noticed new clause in the Athens Convention, 2002, is the clause that “‘loss’ shall not include punitive or exemplary damages.”¹²² Read together with the rule that “No action for damages for the death of or personal injury to a passenger ... shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention,”¹²³ it means that the Convention effectively limits damages to compensation and restitution as opposed to damages of a penal nature. It is not a coincidence that terminology from the law of the United States of America has been used.

The compensation under the Convention could be for economic loss, but could also extend to compensation for pain, suffering and bodily injury. Which losses are compensable, and how they are evaluated, is a matter for national law.

There is no doubt that this clause is an innovation. It is likely to make the high levels of liability somewhat more acceptable to insurers and carriers. It is also a contribution to the harmonization of laws on a practically important point, which is likely to create a precedence.

14 Accident Insurance

Accident insurance was much debated during the Athens negotiations. The idea was to get an alternative to the P&I insurance in order to avoid the P&I monopoly,¹²⁴ and in particular to find ways around their limited capacity and typical P&I terms, such as the exception that the insurer should not be liable if the insured had committed an act of willful misconduct.¹²⁵ For some, the idea of a basic compensation to passengers even if the carrier had not been negligent at all was also attractive.

In accident insurance policies, one often finds clauses on standardized compensation for specified injuries (e.g., USD X for the loss of an arm). This was not seen as particularly attractive in an international convention. Levels of compensation vary from state to state. However, it was soon clarified that

¹²² Athens Convention, 2002, article 3, paragraph 5(d).

¹²³ Athens Convention, 2002, article 14.

¹²⁴ The Pooling Agreement of the major P&I clubs relies on an exception from the general competition rules of the European Community, *see* Commission Decision Relating to a Proceeding Pursuant to Articles 85 and 86 of the EC Treaty and Articles 53 and 54 of the EEA Agreement (1999/329/EC).

¹²⁵ *See* IMO documents LEG/CONF.13/9, LEG/CONF.13/9/Corr.1 and LEG/CONF.13/CW/WP.7.

accident insurance was obtainable also without clauses on standardized compensation.¹²⁶

Accident insurance did not fulfill all expectations. Basically, the problem is that both P&I and accident insurers utilize the same reinsurance market, and that accident insurers usually have not considered cumulative risks, such as all the passengers of a cruise vessel. Accident insurance could perhaps have made it possible to eliminate the willful misconduct exception in the compulsory insurance cover. The majority of states chose however to keep this exception in.

The novelty of the Athens Convention, 2002, is that the text is deliberately drafted so that it is possible for a carrier to use accident insurance instead of P&I insurance, if he so wishes and has the chance to cover himself in that way. The idea is that accident insurance can “cover liability under this Convention”¹²⁷ just as well as, e.g., a bank guarantee. It does not matter that an accident insurer is unlikely to invoke all the defences available to providers of financial security under the Convention. The *travaux préparatoires* of the Convention confirms that this is the correct reading.¹²⁸

It remains to be seen whether the option of using accident insurance to fulfill all of or part of the financial security requirement will be much used. As a matter of principle it is however only right to open the market for all kinds of providers of financial security on the same conditions. This precedent is likely to be followed in the future.

15 Conclusion

My starting point was that the Athens Convention, 2002, did not change the world. Not surprisingly, the points discussed above do not call for a revision of that statement. But I believe that it has been demonstrated that the Convention includes some points of law that could rightfully be called lasting novelties – for better or worse.

¹²⁶ IMO document LEG 78/3/3, paragraph 3.

¹²⁷ Athens Convention, 2002, article 4bis, paragraph 1.

¹²⁸ IMO document LEG 81/5/1, Paragraph 6.