



ANTARCTIC TREATY
XXI CONSULTATIVE MEETING

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ДОГОВОР ОБ АНТАРКТИКЕ
XXI КОНСУЛЬТАТИВНОЕ СОВЕЩАНИЕ

83

COMPULSORY INSURANCE UNDER LIABILITY REGIMES

Agenda item 6g

Submitted by IAATO

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**INTERNATIONAL GROUP OF P&I CLUBS
78 Fenchurch Street, London EC3M 4BT**

Secretary & Executive Officer:
D.J.L. Watkins

Telephone: 0171 488 0078
Fax: 0171 480 7877

By fax 00 49 62 21 48 2288

Professor R. Wolfrum
Max Planck Institute for Comparative
Public Law & International Law
Heidelberg
Germany

14th May 1997

Dear Professor Wolfrum,

I apologise for intervening in the work of your committee at such a late stage in your proceedings: I regret that we have only recently been made aware of your deliberations. Nonetheless we felt that it was worthwhile to contact you in view of the nature of our work and in view also of our experience in several areas which are very similar to those under discussion by your group.

I shall send by mail to your office in Germany a copy of a brochure which explains the nature and operation of the International Group in more detail. It is perhaps sufficient to explain here that the International Group represents its fourteen constituent members, mutual insurers who cover between them the third party liabilities of more than 90% of the world's ocean-going tonnage. Each of the P&I Clubs in the International Group is a true mutual in the sense that they are not run for profit: risks are shared mutually and as a consequence there is a general expectation that the risks which each shipowner member brings to the Club are roughly comparable.

Because they cover the third party liabilities of shipowners the Clubs have been involved in much of the legislation developed in the maritime field by UNCTAD and IMO. Of particular relevance to your work has been our involvement in the law governing pollution. The Civil Liability Convention (CLC) in respect of oil pollution broke new ground in

page 2.

developing a system whereby liability for pollution damage under the Convention was channelled to one party, the registered owner, who was obliged to provide a certificate of insurance in respect of the shipowner's liability under the Convention. Claims in excess of this amount are met by the International Oil Pollution Compensation Fund which was established by a Convention agreed in 1971 (both oil pollution conventions were revised in 1992). The Clubs were closely involved in the development of these Conventions and are the principal providers of the compulsory insurance certificates.

We were also closely involved in the development of the HNS Convention 1996 which again provides for compulsory insurance in respect of the carriage of hazardous and noxious cargoes. Again the compulsory insurance of the shipowner is supplemented by a fund established by cargo interests.

We are currently involved in the development of a Protocol to the Basel Convention on the carriage of hazardous waste which aims to provide a comprehensive liability regime with compulsory insurance in respect of the carriage of hazardous waste.

We were only marginally involved in the development of the CRTD Convention which aimed to provide for liability in respect of the land carriage of hazardous and noxious substances. This Convention has yet to come into force, one of the principal obstacles apparently being the inability of carriers to obtain the insurance which the Convention requires.

I have outlined the International Group's experience in this field because it may be relevant to your concerns and we may be able to assist. We have been unable in the time available to study the texts which have been developed to date but, if you wish us to do so we would be happy to submit detailed comments at a later stage. In the meantime we can only comment that as a general matter insurers regard the provision of compulsory insurance as a form of anticipatory guarantee and therefore require the liability system and the limits of liability to be as clear and precise as possible. In particular the question of definition of damage needs to be delineated as narrowly as policy will allow - one of the reasons why the Clubs have refused to provide certificates of insurance

page 3.

under the U.S. Oil Pollution Act is that the definition of damage is fundamentally flawed.

We stand ready to assist in any way that we can and look forward to hearing from you.

Yours sincerely,



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D.J.L. Watkins

copy to New Zealand:

c/o Marianne Drahois, Executive Assistant
ATCM XXI Secretariat
Convention Centre
Christchurch, New Zealand

fax 00 643 363 3884

INTERNATIONAL GROUP OF P&I CLUBS
78 Fenchurch Street, London EC3M 4BT

Secretary & Executive Officer:
D.J.L. Watkins

Telephone: 0171 488 0078
Fax: 0171 480 7877

Mr. D. Schoeling
IAATO
111 East 14 Street, Suite 110
New York NY 10003
USA

12th May 1997

Dear Mr. Schoeling,

Your letter of 11th April 1997 to Nigel Carden has been passed to me because this is plainly a matter which concerns the International Group as a whole.

As you know the International Group is made up of fourteen P&I Clubs, mutual insurance organizations which between them insure the third party liabilities of over 90% of the world's ocean-going tonnage. The International Group has therefore been closely involved with most of the developments regarding responsibility for the marine environment in recent years. For instance we were closely involved in the development of the Civil Liability Convention on oil pollution (1969) and the HNS Convention (1996). We are currently involved in the development of a liability Protocol to the Basel Convention on hazardous waste. With this experience we consider that we may be able to assist the deliberations of the Legal Experts Group which is due to meet in Christchurch.

We were not made aware of this matter in sufficient time to be able to attend the meeting or make submissions to it but we very much hope that an opportunity will be given for us to take part in the work in future.

Yours sincerely,


D.J.L. Watkins