

**The Changing Rules of the Playground:
A Review of the New and Proposed International Maritime
Conventions and their Affect on Marine Insurers**

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September 23, 2002

Good Afternoon Ladies and Gentlemen:

It is indeed a pleasure to address you today as President of the Maritime Law Association of the United States. I would like to join in welcoming you to the Houston Marine Seminar which our Association fully supports.

It is not my intention to give you a lecture on some vague legal principle. I intend this afternoon to point out to you certain sections of some of the new or proposed conventions or protocols which have been recently passed or which are in the works, which the marine insurance market should be paying attention to. I refer specifically to the HNS Convention, the Bunkers Convention, the Wreck Removal Convention, amendments to the Athens Convention, and a possible Seafarer's Convention. Each of these has its own little interesting twists which might affect how it's brokered to the underwriters and how the underwriters respond. I do not have the answers to any of the points I raise, I bring them up simply to emphasize to the underwriters and brokers who place business with the underwriters, that there are reoccurring points which seem to be popping up with each new convention with regard to insurance, the right of direct action against underwriters and the amount of risk.

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My intention is to follow here this afternoon with a couple of overhead projections of interesting clauses which underwriters must be aware of, and the pitfalls which might arise by their signing on to any risk covering the subject matter and then leave it to you to mull over and decide how the insurance community will interact under the new Conventions and protocols about to be enacted.

I might add, before going forward, that there is a feeling or perception amongst those that develop these new Conventions and protocols that the insurance industry offers very little in way of consulting or advice regarding proposed new laws, rules, and protocols until the matter is about to be enacted and the insurance industry starts to complain that it will not work.

The insurance industry, and I include the P&I Clubs, did this during the work up of OPA 90 and then backed off--thus losing credibility. The result is that now with many of the same arguments being made against the amendments to the Athens Convention credibility is not there because the marine insurance industry waited too long to complain and should have intervened much earlier and worked with the drafters of the protocol early in the drafting process.

Conventions and their Impact

At this point, however, OPA 90 is old news. The place where marine insurers need to focus their attention now is the IMO's Legal Committee. While the IMO is primarily concerned with marine safety and avoidance of marine pollution, it has become active in introducing international conventions with regard to compensation and liability in maritime matters. In the past decade, the IMO Legal Committee has become very

active in drafting and enacting conventions and protocols that substantially displace standard insurance concepts and radically re-shape the relationship between maritime insurers, shipowners, and claimants. If left alone, the IMO will likely continue to draft and pass conventions until all conceivable types of maritime disasters are addressed via their conventions.

While the IMO's conventions do not become "law" immediately upon passage, they eventually will become law in a significant number of nations. Thus, what the IMO passes will gradually become the international standard, regardless of whether the United States ever decides to adopt them.

The CLC and the introduction of Direct Action

The first international convention on liability and compensation that the IMO passed was the International Convention on Civil Liability for Oil Pollution Damage, which was passed in 1969 and which has become known as the CLC. This convention established liability limits with regard to marine oil tanker disasters, and was drafted in the wake of the Torrey Canyon disaster of 1967.

While international conventions establishing liability caps for disasters via international conventions are not new, the CLC differed from predecessors in that it included the relatively new concept of compulsory insurance with the option of direct action against insurers, and limited defenses to coverage. The relevant text in the CLC is as follows.

Article VII

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.

5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this Article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this Article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provision shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, irrespective of the actual fault or privity of the owner, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defenses (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defense that the pollution damage resulted from the willful misconduct of the owner himself, but the defendant shall not avail himself of any other defense which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

If something is repeated often enough, eventually it will be seen as the truth. As you will see, the IMO has inserted language similar to this into several other of its conventions, and by force of repetition it appears likely that all future conventions drafted by the IMO Legal Committee will contain similar terms as a matter of course.

The largest consequence of including this direct action language is that it effectively eradicates the P&I Clubs' defense of "pay to be paid." This nullifies any prior

agreements made between the insurer and the vessel owner whereby the insurer agrees to indemnify the carrier only for amounts that it in fact pays out. This creates the additional problem with direct action and compulsory insurance in that drastically raised limits of liability and may not be bypassed through bankruptcy of the vessel owner, as they would be otherwise, but are instead recoverable through the insurer. Thus, an increase in the limit of liability established by national or international law can affect marine insurers much more than prior to direct action where an unreasonably high limit of liability simply means bankruptcy of the vessel owner. Also, as written in the CLC and repeated in later conventions, the direct action provisions serve to nullify most coverage defenses except for willful misconduct. Thus, marine insurers substantially lose their ability to shape their coverage and the behavior of the insured via insuring conditions and exclusions, because direct action makes such conditions and exclusions impossible to enforce. Far from being an academic or intellectual problem, such concerns are becoming a reality in the case of the amendments to the Athens Convention, as you I will demonstrate to you.

The IMO's Activities in Creating International Conventions

After the IMO Legal Committee passed the CLC, it went on to create many other conventions addressing liability and compensation. To this effect, the IMO's website proclaims that the "IMO's success in dealing with pollution compensation encouraged Member States to refer a number of other legal matters to the Organization." The IMO Legal Committee thus went on to pass a Convention Relating to Civil Liability in the field of Maritime Carriage of Nuclear Material in 1971, the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea in 1974, and the Convention on

Limitation of Liability for Maritime Claims in 1976. These conventions did not address or alter any rules with regard to insurance law. However, every convention proposed and passed subsequent to the 1976 Maritime Claims convention has included a version of the compulsory insurance/direct action language found in the CLC, along with other terms that may be troubling to marine insurers.

The IMO Creates the HNS Convention

In the 1980s, the IMO Legal Committee started working on a Convention that would later be passed in 1996 as the International Convention on Liability and Compensation for Damages in connection with the Carriage of Hazardous and Noxious Substances By Sea, which has come to be known as the HNS Convention. This convention establishes a two-part scheme to establish liability and provide compensation to those injured by so-called “hazardous and noxious” substances that are carried aboard cargo vessels. The substances covered by this convention include bulk oil, substances included in the International Convention for the Prevention of Pollution from Ships, 1973, as amended 1978, dangerous liquid substances carried in bulk in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals In Bulk, 1983, substances contained in the IMDG code, liquefied gasses, and substances with a flash point less than 60 degrees Celsius.

The first part of the HNS Convention establishes the strict liability of the shipowner, with certain exceptions up to a certain limitation amount, and the second part establishes a fund, to be created via regular contributions to a fund from on-shore “receivers” of cargo that is deemed “hazardous” or “noxious.” These “Receivers” are

basically the on-shore consignees of the cargo who physically receive the cargo upon delivery. Money from this fund would be made available to people and entities injured by hazardous or noxious substances to the extent that their injury or damage is not fully recovered from the shipowner involved in the incident. The specific terms with regard to liability of the shipowner are as follows:

LIABILITY OF THE OWNER

Article 7

1. Except as provided in paragraphs 2 and 3, the owner [of the vessel] at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:

(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

(d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either

(i) has caused the damage, wholly or partly; or

(ii) has led the owner not to obtain insurance in accordance with Article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

Thus, this convention establishes liability on the part of the shipowner even if the ship was not to blame for the incident.

However, what marine insurers should take notice of is the Compulsory Insurance and Direct Action provision in the HNS convention:

COMPULSORY INSURANCE OF THE OWNER

Article 12

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in Article 9, paragraph 1, to cover liability for damage under this Convention.

5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the

owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the willful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

10. A State Party shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

Thus, the IMO Legal Committee has borrowed the compulsory insurance and direct action terms from the CLC and placed them in the HNS Convention. The strict liability of the shipowner thus becomes the strict liability of the marine insurers. By its terms, marine insurers may not enforce any special provisions in their policies limiting or specifying the type, method of carriage, or quantity of hazardous and noxious cargo, because regardless of what the insured does there will be direct action against the insurers and the insurers may not defend based upon breach of these provisions. In the event of an incident, underwriters will be required to set up a “fund” under Article 12, paragraph 8, and thus would be forced to become an instant deep pocket for claimants to access directly.

Currently, 8 nations are signatory to the HNS Convention (Canada, Denmark, Finland, Germany, Netherlands, Norway, Sweden, and the United Kingdom) and need

only complete the ratification and/or acceptance procedures. Two other states have fully ratified the convention (Angola and the Russian Federation). This convention will go in force 18 months after 12 nations become contracting states. Thus, its affects will be felt sooner than we realize since once the convention comes into force Section 11 requires all vessels entering the port of a nation in which the HNS convention is adopted to be in full compliance with the HNS. The UK and Ireland have already passed the enabling legislation in their country to implement the HNS. Thus it won't be long until any vessel calling upon those countries will have to be in compliance regardless of where they are registered.

Since marine insurers will be on the hook directly for the HNS limits, they should rightfully be wondering "how much?" The liability limits of the HNS convention are as follows:

LIMITATION OF LIABILITY

Article 9

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) 10 million [SDR] for a ship not exceeding 2,000 [gross tons];
and

(b) for a ship with a [gross] tonnage in excess thereof, the following amount in addition to that mentioned in (a):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 [SDR];

for each unit of tonnage in excess of 50,000 units of tonnage, 360 [SDR];

provided, however, that this aggregate amount shall not in any event exceed 100 million [SDR].

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

“Units of account” are, of course, the “Special Drawing Right” or SDR, which at this time is equal to approximately \$1.30. Thus, for example, a 60,000 gross ton container vessel would put marine insurers directly on the hook for the full \$100 million SDR limit, which would be approximately \$130 million USD. Notice that the HNS convention limits do not differentiate between a chemical tanker, which may carry exclusively hazardous and noxious chemicals, and a container vessel, whose tonnage may only include a very small quantity of hazardous or noxious cargo. A chemical tanker and a container vessel of the same gross tonnage will both be required to carry the same amount of HNS insurance cover. Additionally, in the event of an incident, regardless of size, the vessel owner or insurer will have to create a “fund” with the entire limitation value:

LIMITATION OF LIABILITY

Article 9

3. The owner shall, for the purpose of benefiting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States

Parties in which action is brought under Article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under Article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

The final term that I would like to bring to your attention involves the liability of charterers under the HNS convention.

LIABILITY

4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Thus, bareboat charterers are not subject to its terms absent intent or reckless behavior. The vessel owners (and thus their insurers) will instead be subject to the HNS responsibilities and requirements, and will have to content themselves with an

indemnification action against the charterers (with the associated risk that there will be no way to collect the losses from the charterer).

The Bunker Convention

In 2001 the IMO adopted the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention). This convention holds a vessel owner strictly liable for damage resulting from the release of bunker oil from their vessel. The strict liability is established as follows:

Article 3 Liability of the Shipowner

1. Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.
2. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.
3. No liability shall attach to the shipowner if the owner proves that:
 - (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
 - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
 - (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
4. If the shipowner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person

who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

5. No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention.

6. Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.

As it did in the CLC and the HNS conventions, the IMO Legal Committee included compulsory insurance and direct action against insurers in the Bunker Convention:

Article 7 Compulsory insurance or financial security

1. The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

10. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may invoke the defenses (other than the bankruptcy or winding up of the

shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the willful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time, unless a certificate has been issued under paragraphs 2 or 14.

12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security, to the extent specified in paragraph 1 is in force in respect of any ship having a gross tonnage greater than 1000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

Limitation of liability is not specifically provided for in the Bunkers convention as passed by the IMO Legal Committee, but is established via whatever national or international regime is otherwise applicable, as follows:

Article 6 Limitation of Liability

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Once 18 nations have ratified the Bunker Convention, it will come into force. It was finished by the IMO in March 23, 2001, and already two nations have become signatory to it, subject to ratification (Brazil and Italy).

Thus, at this point, the IMO has passed conventions mandating direct action with regard to pollution resulting from oil cargo, hazardous and noxious substances, and ships' bunkers. The IMO is not stopping there, however, as it is about to apply similar terms with regard to maritime wrecks.

The Wreck Removal Convention

The IMO Legal Committee is currently drafting a convention regarding removal of maritime wrecks, and anticipates that it will be ready for consideration by a diplomatic Conference in the 2004-2005 Biennium. The current draft has some terms which you should be aware.

First, of course, is the type of damages which a shipowner will be held liable for in the event of a wreck:

ARTICLE 11

Financial liability for locating, marking and removing wrecks

1. Subject to article 12, the shipowner shall pay compensation in respect of the costs of locating the wreck under Article 8, of marking the wreck under Article 9, of removing the wreck under Article 10, and of any associated technical advice and of other services rendered, unless the shipowner proves that the maritime casualty that caused the wreck:
 - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable or irresistible character;
 - (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
 - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

- 2) To the extent that measures giving rise to compensation under paragraph 1 are undertaken because the wreck has been determined to constitute a hazard by reason of its cargo as provided for under article

7(h), the owner of the cargo shall pay compensation in respect of the costs of such measures.

3) The shipowner shall be entitled to limit liability under any applicable national or international regime.

4) Nothing in this Article shall prejudice any right of recourse against third parties.

Notice that cargo owners will be liable under this proposed convention for the removal of their cargo [or the wrecked vessel?]. Surely this will come as a surprise to them, and especially a surprise in the case of owners of bulk oil cargo in the event of a wreck. But this is not confined to just oil, but is an open ended provision that could be applied to just about any conceivable cargo type, subjecting the owners of pesticides, chemicals, and even general cargo to the costs of retrieval, cleanup, decontamination, and/or salvage even if their cargo is worthless after retrieval. Notice that no provision is made in the draft convention to limit cargo owners' liability for removal costs. Are cargo insurers aware of this provision, and are they ready to cover such liability?

The costs of locating, marking, removing, and technical advice and services will probably add up very quickly. And thanks to the inclusion of direct action in the draft convention, those expenses will be paid directly by the vessel's insurers:

ARTICLE 13

Evidence of financial security

1. The owner of a ship over [10/24] metres in length and flying the flag of a State Party shall be required to maintain insurance, or other financial security, such as a bank guarantee, to cover liability under the convention.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it becomes invalid for reasons other than the

expiry of the period of validity, before three months have elapsed from the date on which notice of its termination is given to the issuing authority, unless the certificate has been surrendered to that authority or a new certificate has been issued within the said period. These conditions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

9. Any claim for compensation arising under the Convention may be brought directly against the insurer or other person providing financial security for the owner's liability. However, the defendant may, even if the owner is not entitled to limit liability, invoke the limit of liability prescribed in Article 11, paragraph 3. The defendant may further invoke the defenses (other than the bankruptcy or winding up of the owner) that the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the maritime casualty was caused by the willful misconduct of the owner himself, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

10. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time, unless a certificate has been issued under paragraphs 3 or 12 of this article.

11. Subject to the provisions of this article, each State Party shall ensure, under its national legislation, that insurance or other security, to the extent required by paragraph 1 is in force in respect of any ship, irrespective of flag, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

Notice that there is no provision for a marine insurer to defend based upon breach of class requirements or other shortcomings on the part of the insured (short of outright willful misconduct) that may have caused the wreck in the first place. The insured apparently can neglect the upkeep of his ship with impunity and in the event of a wreck the marine insurers will still be responsible for paying the costs up to the applicable liability regime, because they cannot enforce such policy requirements by denying coverage by the terms of the policy.

The draft wreck convention also has a forum selection clause guaranteeing that marine insurers will be dragged into court in the country where the damage took place:

ARTICLE 14
Jurisdiction

1. Actions for compensation under the Convention may only be brought in the courts of the State whose interests are most directly threatened by the wreck.
2. Each State Party shall ensure that its courts possess the necessary jurisdiction to consider such actions for compensation.

The inclusion of marine wrecks in the list of hazards which require compulsory insurance could be seen as similar in kind to oil spills and chemical spills, in that it involved the leaving of waste upon the shores of an otherwise innocent nation that was left with the tab of cleaning up. However, the IMO apparently does not consider strict liability and direct action against underwriters to be limited to such circumstances. It is with their proposed amendments to the Athens Convention, originally passed in 1974, that the delegates to the IMO Legal Committee have made clear their belief that everything under the sun should be subject to compulsory insurance with direct action and limited policy defenses.

The Athens Convention

The IMO legal committee is currently drafting amendments to the Athens Convention. This international convention was first established by the IMO in 1974, and set out liability limits with regard to personal injury and personal property damage for passengers of cruise ships and their baggage. The IMO Legal Committee's draft

resolution has as of late come to the attention of marine insurers, passenger vessel owners, and their P & I Clubs, who are only now beginning to realize that these amendments mean trouble, even though they have been on the table and apparent for years and years prior.

In the case of injuries suffered other than during “shipping incidents,” the original Athens convention and the proposed amended convention both hold shipowners liable only if the passenger can prove “fault or neglect” on the part of the shipowner. The amendments to the Athens convention do not seek to change that. A “shipping incident” is roughly considered to be a shipwreck, collision or stranding, explosion or fire, or defect in maritime-type equipment, and its precise definition is currently being deliberated. Due to the crucial nature of the definition, participation in its definition is highly recommended; since the marine insurers will be the ones who suffer should the definition prove defective in practice.

However, with regard to “shipping incidents,” the proposed amendments seek to change the original Athens convention provisions (which simply reversed the burden of proof regarding “fault or neglect” to the shipowner to prove lack thereof) to a strict liability regime up to a certain amount of compensation with only a few narrow exceptions.

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on a distinct occasion does not exceed [blank] units of account, unless the carrier proves that the incident:
 - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause the incident by a third party.

If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

Limit of liability for death and personal injury

1. The liability of the carrier for death of or personal injury to a passenger under article 3 shall in no case exceed [blank] units of account *per capita* on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.

Also note that the amendments allow each member nation to further raise the shipowner's liability limits beyond that established in the Convention.

Additionally, the delegates have agreed that "Psychological Damage" and damage for "purely emotional distress" is included in the definition of "Personal Injury," and thus is recoverable on a strict liability basis in the event of a "shipping incident."

Purely emotional distress and punitive damages
(Draft Protocol Article 4)
Report of the Legal Committee On The Work Of Its 83rd Session
(Leg. 83/14)

31 The Committee then considered a further proposal by the observer delegation of the ICS contained in paragraphs 24 and 25 of document LEG 83/4/6 to exclude the concept of purely emotional distress from the

concept of personal injury and to exclude punitive or exemplary damages from the ambit of the protocol. It argued that this would align the draft protocol more closely with the Montreal Convention.

32 While there was some support for excluding purely emotional distress, for reasons given by the ICS, most delegations who spoke were of the view that the protocol should make provision for this kind of damage.

33 In this regard, it was pointed out that this type of damage was not excluded from the 1974 Convention, that it was a well-established head of damage in many jurisdictions and that the danger of frivolous claims being made under this head of damage was small.

34 The Committee agreed to retain the concept of purely emotional distress in the draft text.

35 The delegation of Spain noted that the official translation in Spanish of the expression *personal injury* in the 1974 Athens Convention seems not to conform with the meaning according to which psychological damage could be included within the terms of compensation regulated in the treaty. The delegation noted that there was consensus in the Committee that psychological damage should be included with the expression *personal injury* and request that the authentic text in the Spanish language of the prospective protocol reflects this consensus in a clear, unambiguous way.

36 With respect to the concept of punitive or exemplary damages, it was noted that any limitation could easily be made by national law and it was not necessary to include a provision to this effect in the protocol. However, most delegation who spoke agreed, as a compromise, to adopt the ICS proposal to exclude from the concept of loss the notion of punitive or exemplary damages.

Thus, shipowners can find themselves *strictly* liable for the psychologist bills of all of the passengers in the event of a “shipping incident,” even if nobody was physically harmed.

Additionally, the proposed amendments to the Athens convention include compulsory insurance and direct action against insurers.

Compulsory Insurance

1. When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover his or her liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than [blank] units of account *per capita* on each distinct occasion.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

10. Any claim for compensation covered by insurance or other financial security pursuant to this article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defenses (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may avail himself of the defense that the damage resulted from the willful misconduct of the insured, but the defendant shall not avail himself of any other defense which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

Notice that in both the liability section and the compulsory insurance section the limit of liability is specified as being *per capita*. This brings the potential for more liability than one would think, since cruise ships can carry thousands of people, and are

getting bigger every year. All of this liability will be borne by the insurers, subject to direct action by plaintiffs entitled to strict liability, even for psychiatrist bills and psychiatrist-prescribed pharmaceuticals.

With such large amounts of potential liability, one of the issues that is currently being debated is precisely where direct actions may be brought, and thus how many jurisdictions marine insurers will be subject to direct suits against them for the activities of their insureds. Currently, the draft amendments include the following with regard to jurisdiction:

Article 17

Competent Jurisdiction

1. An action arising under articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State party governing proper venue within those States with multiple possible forums:

- (a) the court of the State of permanent residence or principal place of business of the defendant, or
- (b) the court of the State of departure or that of the destination according to the contract of carriage, or
- (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
- (d) a court of the State where the contract or carriage was made, if the defendant has a place of business and is subject to jurisdiction in that state.

2. Actions under article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

3. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

Thus, it is very likely that in the event of a disaster the P&I Clubs will be directly sued in multiple jurisdictions, with each court asserting a claim directly against the insurance funds, and there appears to be no provision in the Athens Convention for how the courts will divide the policy limits or otherwise apportion the recovery or deal with inconsistent decisions.

The specific limits of liability for strict liability and for ultimate liability are still being debated, but it appears that they will be quite high. So high, in fact, that the P&I Clubs have declared that a “worst case event” to be quite possibly beyond the ability of the P & I clubs to pay, and beyond the availability of cover from other sources in the current insurance market. The current provisional numbers are 350,000 SDR per capita for strict liability and compulsory insurance, with a 500,000 SDR ultimate limit of liability for the carrier. In a worst case scenario of a collision of two cruise ships with a total passenger count of 7,000 passengers, that would result in a direct action claim against insurers of just under 3.2 billion dollars, with an additional 1.4 billion not subject to compulsory insurance. These numbers are staggering.

The conventions establishing direct action against insurers prior to the proposed Athens amendments had the claimants being governments and property owners who had their territory damaged by oil or chemicals or wrecked vessels thus strict liability and direct action was provided to narrowly defined parties with definite interests and readily ascertained concrete damages. However, by granting individual passengers the right to direct action and strict liability for their personal injuries, the proposed amendments to the Athens Convention goes beyond the type of concrete, readily ascertainable claims that arose under prior conventions. As the amendments currently stand, a “shipping

incident” will open the floodgates to massive numbers of people making claims against marine insurers on a strict liability basis for all sorts of injuries, including allegations of psychological damage.

The proposed modifications to the Athens convention make apparent a real danger that is inherent to compulsory insurance with direct action regimes. In the absence of direct action, when the “pay to be paid” rule was honored, higher limits of liability would not have such a sudden and direct affect upon insurance reserves. If the limit of liability was too high, the point would be reached where the ship declares bankruptcy or insolvency and the insurance pool would not be wiped out. But when direct action is mandated, unreasonably high limits cease to be “impossible to collect.” The insurance company or P&I Club will have no choice but to take the impact squarely.

A Future Seafarers’ Convention

The IMO Legal Committee is currently looking into the issue of seaman death, personal injury, and abandonment, and has had three committee meetings in this regard. The next committee meeting is in London in the first week of October. In their meetings they have discussed perceived problems of seafarers obtaining sub-optimal or delayed compensation for injury, as well as seafarers being stranded in foreign countries with no means of returning when the vessels they work on go bankrupt and stop operating.

In the discussions, the topic of compulsory insurance and direct action has been raised repeatedly, and it appears likely that any future convention to come from this discussion will include those provisions. See some excerpts from the report on the first meeting are as follows:

81st Session of Legal Committee--January 2000
Report of IMO/ILO Ad Hoc Expert Working Group on Liability and
Compensation regarding Claims for Death, Personal Injury and
Abandonment of Seafarers

Formulation of Recommendations on crew claims for death and injury

6.73 The Seafarers held the view that compulsory insurance was the most widespread tool to cover personal injury claims, and that models could be found at the national and international levels. Compulsory insurance did not offer complete protection since in case of shipowner's insolvency, for instance, the "pay to be paid" principle would in practice prevent any recovery by the crew member. What was needed, therefore, was a compulsory insurance scheme coupled with a system of direct access for the seafarer such as that provided in the Direct Action Statute of the State of Louisiana or the Direct Act of Puerto Rico. Another possible solution would be personal accident insurance coverage contracted by the shipowner for all crew members/seafarers. In this case, the right of direct action would be part of the insurance policy. In summary, a system providing for compulsory insurance without direct action would not be a viable solution. Furthermore, the "pay to be paid" in P&I Club rules would need to be changed for any P&I arrangement to be effective.

6.74 The Shipowners considered that the notion of compulsory insurance had to be analyzed in greater depth, taking into account the wide differences between the social security systems and the legal and contractual regimes in different countries.

6.75 The delegation of the United States provided information on the US legislation requiring commercial vessels entering US waters to possess a certificate of financial responsibility for oil pollution clean-up costs. According to that legislation, most vessels had to demonstrate that they had the means (e.g. bonds, insurance guarantee, existence of assets in the US, etc.) to pay for damages caused in the event of an oil spill. These provisions were enforced by the US port State control authorities.

6.76 The delegation of Greece suggested that compulsory insurance was an option and that the Seafarers, the Shipowners and the P&I Clubs should meet to discuss all the aspects of the issue.

6.77 The Seafarers suggested that the creation of an international or national fund should also be mentioned in the list of recommendations regarding claims for death and injury, as the case might arise where

following the abandonment of a ship an outstanding compensation claim for death or injury would need to be secured. The Shipowners opposed any reference to the idea of an international fund as a possible solution to the personal injury or death problem.

6.82 An observer from the International Group of P&I Clubs, stated that during an earlier ISF/ITF meeting held in June 1999, P&I Clubs had given their consent to participate in an informal working group P&I Clubs were thus ready to take part in the proposed meeting on the following conditions: discussions had to be “off the record” and should not be brought to public scrutiny; no observers were to be admitted; the questions of compulsory insurance and direct access for crew members/seafarers would not be addressed.

As of now, the committee has passed a list of guidelines for member nations which prescribe insurance or other form of security to pay for seafarers’ death, personal injury, and abandonment claims. The guidelines provide as follows:

4 SHIPOWNERS’ RESPONSIBILITIES

4.1 Shipowners should arrange a financial security system which complies with these Guidelines.

4.2 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these guidelines.

5 SCOPE OF FINANCIAL SECURITY SYSTEMS

5.1 The financial security system should provide for:

- .1 the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
- .2 the maintenance of the seafarers from the time of abandonment to the time of the arrival at the place of repatriation;
- .3 the payment to the seafarers of all outstanding remuneration and contractual entitlements; and
- .4 the payment to the seafarers of other expenses incurred by them during the period of abandonment arising from the abandonment.

6 FORM OF THE FINANCIAL SECURITY SYSTEM

- 6.1 The financial security system may be in the form of, *inter alia*, social security schemes, insurance, a national fund, or other forms of financial security;
- 6.2 The financial security system in addition to the provisions of paragraph 5.1 should provide the following:
 - (a) a right of direct access by the seafarer to the financial security system
 - (b) sufficient coverage in respect of the elements of abandonment contained in these guidelines; and
 - (c) the applicability of the financial security system to all seafarers irrespective of nationality.

These guidelines are considered by the committee to be an “appropriate interim measure,” and the provisional agenda for the fourth meeting of the committee includes “assessing the need for a mandatory instrument.” Thus, it is highly likely that through bureaucratic momentum terms similar to those above will be incorporated into a convention on seafarers’ rights regarding death, injury, and abandonment.

Where has the marine insurance industry been?

Regardless of the actual level of involvement in the past decade, it has become apparent that the marine insurance industry has not been involved enough in the activities of the IMO Legal Committee. As any lawyer will agree, it is difficult to prove a negative; however the lax nature of involvement in the IMO Legal Committee and with the individual delegations of the various member nations cannot be denied.

Letter to Members of the Athens Correspondence Group
From David Baker, UK Department For Transport
16 August 2002
(Commenting on the amendments to the Athens Convention)

“It is, however, somewhat disappointing that such fundamental differences of opinion remain at this late stage, and that not all sectors have voiced such concerns from the outset of the work on the draft Protocol.”

Concerning the current Bunkers Convention, marine insurers have lost the opportunity to make certain amendments simply because they were not made early enough.

March 19th to 23rd, 2001

Bunkers Convention Diplomatic Conference at IMO Headquarters

BMLA Paper by Patrick Griggs.

‘The International Group of P&I Clubs missed an opportunity to limit recovery with regard to the bunkers convention in regard of “natural resource damages” (speculative damages) by taking out the language in the convention (that was also in the CLC) allowing local governments to introduce domestic legislation in that regard. “Unfortunately, such was the pressure of time that the International Group was persuaded to withdraw this proposal.”’

‘The International Group of P&I Clubs, in a submission to the Diplomatic Conference, suggested that instead of leaving all those persons embraced by the wide definition of shipowner exposed to claims it would make sense to “channel” all claims initially to the registered owner. If, and only if, the shipowner failed to satisfy the claim would the bareboat charterer, manager or operator be exposed to claims. Again, time constraints prevented exploration of this practical proposal and it was withdrawn.’

‘In a submission to the Diplomatic Conference the International Group of P&I Clubs (and the BMLA in a separate submission to the UK Department of Transport and the Regions) pointed out that there was a widespread assumption that in States where the LLMC applies it provides a right of limitation for pollution damage caused by bunker spills. It was suggested that this might well be an erroneous assumption. The claims for which liability may be limited are set out in Article 2(1) of the LLMC and include claims for loss or damage to property and claims in respect of loss resulting from infringement of rights. It is strongly arguable that the LLMC may give no general right of limitation for bunker pollution claims which do not involve physical damage to property or result in infringement of rights (for example economic loss arising from disruption

to a business caused by an oil spill) because such claims cannot be brought within the existing wording of Article 2(1) of the LLMC.

Because of pressure of time the International Group was persuaded to withdraw this submission. It is a matter of some disappointment that, the problem having been identified and a solution devised, it was not possible to add a few words to Article 6 which would have put the matter beyond doubt.’

International Chamber of Shipping Letter to all Full and Associate Members, 26 March 2001:

‘It became apparent at an early stage (specifically, at informal preparatory meetings held during the week before the conference, to which ICS and the International Group were “summoned”) that our proposals, while recognized as being well-intentioned, were not welcomed by the principal proponents of the draft convention (Australia, Canada, the United Kingdom) and the Chairman. They feared that time would not permit proper consideration of the industry proposals and that the success of the conference would be jeopardized if we were to press our points. We were therefore put under firm pressure to withdraw them...’

Presumably the marine insurers were not in attendance or not prepared regarding these points at earlier points in the drafting process.

The activist slant of the IMO Legal Committee in proposing politically-motivated extensions of the law through its conventions instead of merely codifying general practice was pointed out as far back as 1999 by Patrick Griggs in the CMI Newsletter, No. 1. In response, it was suggested that the IMO operate as the CMI would like, and go back to codifying existing practice. However, the IMO will do what its members will it to do, and thus the only way to curb its activism is for the marine insurers to be present and guide proposed conventions in the direction that they wish them to go. By now it should be obvious that the IMO will not be “coached” from the sidelines. The marine insurers must show up and change the game by playing in it.

In that same article, Mr. Griggs points out that the CLC's compulsory insurance/direct action provisions are turning out to be not the exception, but, as he calls it, the "thin end of the wedge." If marine insurers are going to pull that wedge out, they better get to work on it.

Participation Of Marine Insurance Brokers

It appears that marine insurance brokers have not been deficient in giving advice to delegates to the IMO Legal Committee. They have advised the Committee that cover is available for the limits in the proposed revised Athens Convention, even though the actual insurers vigorously disagree.

Eric Rosaeg, July 15, 2002, Draft document for submission to the Diplomatic Conference on the Athens Convention.

9. We have consulted with all the leading brokers, and have found no broker that will maintain that there will not be insurance capacity for at least SDR 2 billion in the commercial market (the market P&I Clubs use for reinsurance). Even for a very large ship (3,000 passengers) this would allow compulsory insurance (Convention article 4bis) for SDR 666,666 per passenger. Several brokers indicate that a lot more capacity could be made available.

10. Brokers indicate that insurance for willful misconduct and with direct action is available in the market.

18. For us, it is important to emphasize that it is for the industry, and not for governments, to decide what are the best way to arrange for the fulfillment of the new insurance rules for passengers. For governments it suffices to say that it is possible to meet the requirements of the new rules. On the basis of consultations with brokers, we are confident that it is possible.

The failure of marine insurers to be involved early has resulted in the marine insurance broker's word going unopposed during the time that the delegates were

forming their expectations for the revised Convention. The result is an adversarial relationship between marine insurers and the very delegates and assistants that they should be advising, and a clash of egos as each side declares the other to be incorrect and partisan. This inevitably results in an exchange of adversarial letters that are more adversarial than constructive. Such occurred between Professor Eric Rosaeg of the Scandinavian Institute of Maritime Law who has written the draft Athens Amendments and Michael Crye of the International Council of Cruise Lines. In these letters, it is apparent that neither side had discussed the topic together until much time had passed and until they developed strong opinions regarding their relative positions. That Mr. Rosaeg wrote the draft amendments to the Athens protocol without any input or guidance from marine insurers is shocking and shows just how insufficiently involved the marine insurance industry is in the workings of the IMO legal committee and the member states' delegates.

Reporting On Conventions

The marine insurance industry's lack of a strong voice is evident in the objective and passive way it reports on IMO legal committee meetings. Simply put, the marine insurance industry has not been taking early stands on the issues. This objectivity is, once again, the silence that is taken to mean agreement.

It's reporting of the events at Legal Committee meetings has been so passive and objective that it is evident that marine insurers aren't even preaching to the choir, let alone seeking to convert the IMO delegation. At times the writings about the marine insurance industry sound even fatalistic.

March 19th to 23rd, 2001
Bunkers Convention Diplomatic Conference at IMO Headquarters
BMLA Paper by Patrick Griggs.

“Compulsory insurance has become a feature of recent liability conventions (notably CLC and HNS) and is likely to feature in future liability instruments such as the proposed Protocol to the Athens Convention of 1974.”

“Insurers are becoming used to the concept of the direct action even though it breaches old established concepts of indemnity insurance. The concept of direct action having been conceded in the CLC and in the HNS Convention it was not strongly opposed by the International Group of P&I Clubs in the context of the bunker convention.”

Should it be a great surprise that the IMO Delegation took the marine insurance industry’s silence to mean agreement? You certainly shouldn’t allow that to continue. It should not be said that the marine insurance industry is seen but not heard.

Insurance Industry Lobbyists

Do an internet search for “insurance industry lobbyists” and the results gives one the impression of a massive corps of mercenary-ambassadors, voicing the concerns of the insurance industry they represent, taking politicians out to lunch, staying late to scrutinize proposed legislation, and watching legislative bodies like a hawk.

In this modern era, it is becoming more and more important for industry leaders to perform their roles as consultants and representatives of their industries. Private agreements are becoming less and less determinative of rights and duties as they become displaced, nullified, and superceded by regulation. Since the marine insurance industry is so international and private, the industry has avoided regulation to a great degree at this point, and have certainly not yet been subjected to any comprehensive regulatory regime.

However, as time progresses more and more of your activities will end up being regulated to a certain degree. Political entities and intergovernmental agencies stand ready to regulate whenever they become aware of a situation that they feel should be changed. That public regulation will slowly displace private agreements is certain and unstoppable. It is the trend and by no means exclusive to the insurance industry. A broad frontal assault against regulation will be unsuccessful. Rather, the way to succeed is for industries to involve themselves as much as possible in the process whereby the regulation is created, so that the end result will work smoothly and properly. Politicians and governments will take the initiative and regulate with or without the help of those who they seek to regulate. That is why it is so important that the Marine Insurance industry involve itself intimately in every stage of the IMO's convention-drafting process, and spend time and effort to work with the delegation of every country that is a member. A coherent message, the facts to justify it, and workable solution should be ready for delivery and presentation to individual delegates and the IMO as a whole in advance of any problem which could come to the IMO's attention. Lobbyists should be on retainer and should be available to see individual IMO delegates at all times to discuss all matters affecting marine insurance.

Most other big industries are at a higher stage of readiness, preparation, and involvement in the realm of regulation than the marine insurance industry is. Look at the chemical industry, the tobacco industry, the pharmaceutical industry, even the domestic insurance industry in the United States and Europe. They have learned to co-exist with regulation. Though they may not agree with every rule or requirement that is passed into law, they have at least participated and shaped the regulatory landscape to ensure that

their operations aren't placed in jeopardy by misinformed regulators. They have people on their team that know the politicians who make the rules. Their say pulls weight because it is proactive, early in the process, and consistent. They monitor the status of proposed bills, and have people ready to voice their concerns when issues are discussed. They are prepared. You should be also.

In a world where the nationalities of vessels, vessel owners, crews, officers, port destinations, classification societies, and insurers are all different, it is a great challenge for marine insurers to fulfill their role as representatives and consultants to the various governmental entities and inter-governmental organizations. However, if insurers continue to neglect to advise and consult with the various governments and continue to fail to get themselves involved with the process of discussing and drafting conventions early on, at the point of inception, of any proposed new rules that would have an impact upon insurance, the marine insurance industry risks being subjected to a regulatory regime that at best doesn't work properly and at worst causes a collapse of insurance cover due to good-intentioned liability limits that deplete the insurance reserves that everybody relies on. Complaining or criticizing after the fact is not good enough anymore, and hasn't been good enough for a long time. The industry should do better, and I trust will do better in the future.