



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
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**A RESOLUTION TO INCORPORATE THE ATHENS  
CONVENTION RELATING TO THE CARRIAGE OF  
PASSENGERS AND THEIR LUGGAGE BY SEA,  
2002 INTO THE MERCHANT SHIPPING ACT  
OF THE FEDERAL REPUBLIC OF NIGERIA  
AS AMENDED ON 25 MAY 2007**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) at  
the IMO International Maritime Law Institute**

**Submitted By: MALAFA ABBO-SADIQ RUTH  
(Federal Republic of Nigeria)**

**Supervisor: Mr. Norman Martinez**

**Academic Year 2008/2009**



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**CARRIAGE OF PASSENGERS AND THEIR  
LUGGAGE BY SEA: LIABILITY AND  
COMPENSATION FOR DAMAGES –  
THE NIGERIAN PERSPECTIVE**

**A Dissertation submitted in partial fulfillment of the requirements for  
the award of the Degree of Master of Laws (LL.M.) at the IMO  
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(Federal Republic of Nigeria )**

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## COMMENT AND EXPLANATION

ON A BILL FOR AN ACT FOR THE RATIFICATION OF THE ATHENS CONVENTION 2002 ON CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA.

### INTRODUCTION

There are several maritime disasters that brought about catastrophic consequences in the carriage of passengers industry. The accident of the Titanic resulted in the death of 1,501 passengers. This brought about the first Safety of Life at Sea (SOLAS) Convention. The Sultana was the worst disaster in the history of the United States of America. The 2 accidents mentioned above did not receive much attention due to the assassination of the then President of the United States, President Lincoln and the end of the American Civil War in 1865.

In the disaster involving the Empress of Ireland, 1,270 lives were lost. The news of this accident was over-shadowed by the events of World War I hence, did not receive much publicity also. In Canada, the worst maritime disaster involved the MV Bukoba. The accident was caused by the overcrowding of the passenger ferry. The MV Joola and the Al Salam Boccacio also suffered similar disasters in 1998. However, the worst disaster in maritime history was that involving MV Dona Paz on 20 December 1987 in which the death toll was more than 4,000. The loss of the Herald of Free Enterprise also in 1987 resulted in the death of 193 passengers. In this case, the crew forgot to close the bow door of the vessel and the vessel took in water and sank. This particular accident led the British government to propose the amendment to SOLAS by introducing the water tight compartments on board ships.

The accident involving the Scandinavian Star in 1990 in which 158 passengers died was also significant. It also brought about the amendment of SOLAS in 1995<sup>1</sup>. In all of these accidents, the liability of the ship owners was outrageously high hence, the need and importance for the limitation of liability.

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<sup>1</sup> Norman Martinez IMLI lecture notes on PAL 2<sup>nd</sup> February 2009.

In 1961, there were calls for the international regulation for the carriage of passengers by sea. This resulted with adoption of the International Unification of Rules Relating to Carriage of Passengers. The Convention tried to separate regime for compensation for loss of life to passengers. That Convention received only 12 ratifications and could not be said to be universally accepted. In 1967, there was the adoption of the International Convention Relating to Loss or Damage to Passenger Luggage. However, this Convention lacked merit because it did not cover loss of life or personal injury. Furthermore, it had only 2 ratifications; Algeria and Cuba. It therefore never came into force due to lack of widespread support.

The two Conventions were merged into the Athens Convention 1974 and the 1976 Protocol. The 1976 Protocol did not amend the provisions of the 1974 Convention but it amended the limits of the Poincare franc and adopted the Special Drawing Rights (SDR) by changing the figures of the 1974 Convention only. The Convention which originally sought to regulate the carriage of passengers by sea also made tremendous impact on the national maritime laws of many States who became parties to the Convention.

Nigeria was one of these countries. It must be stated that the 1974 Athens Convention Relating to Carriage of Passengers and their Luggage by sea has impacted tremendously on the development of Maritime Laws in Nigeria. For example, Act No. 13 of 1997 which established the National Inland Waterways Authority, the Territorial Water (Amendment) Act of 1998, the Exclusive Economic Zone Act and the Land Lock States Act are some of the legislations that were enacted by succeeding Nigerian governments as a result of the 1974 Athens Convention.

Furthermore, organizations such as the Nigerian Ports Authority (NPA), Nigerian Maritime Administration and Safety Agency, Nigerian Shippers Council, and the Federal Environmental Protection Agency were either established or strengthened to give effect to the Athens Convention.

This Convention sought to regulate the carriage of passengers by sea. Not only did it seek to regulate the carriage of passengers by Sea, but it made a tremendous impact on the

national maritime law of many States who became parties to the Convention. Nigeria was of no exception.

In the early 1960s, there was a growing awareness of the inadequacy of the traditional civil and common law that governed the carriage of passengers by sea. This inadequacy gave birth to the adoption of the first Brussels Convention of 1961<sup>2</sup>, for the Unification of Certain Rules Relating to the Transport of Passengers by Sea signed on the 29 April 1961. The Brussels Convention became effective in June of 1965 but it never achieved universal acceptance as most maritime nations did not recognize it. Another important convention was the 1967 Brussels Convention that was signed on the 27 May 1967. It was primarily concerned with the transport of luggage and passenger by sea. This convention never came into force.

The difficulty in conciliating the differences between the 1961 and 1967 Brussels Conventions was one of the reasons which determined the adoption of the Athens Convention of 1974 under the auspice of the IMO. The 1974 Athens Convention is thus the main international convention relating to the carriage of passengers and their luggage by sea. The objective of the Convention is to attribute liability to the carrier for loss or damages suffered by a passenger during the voyage on a seagoing vessel<sup>3</sup>. Thus the convention establishes the carrier's liability for damages or losses suffered by the passenger if the incident causing the damage occurred during the voyage and were due to the fault or neglect of the carrier.

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<sup>2</sup> Brussels Convention of 1961.

<sup>3</sup> Vessels under international trade.

<sup>4</sup> Brussels Convention of 1961.

The difficult conciliation between the 1961 and 1967 conventions was one of the reasons which determined the adoption of the Athens Convention of 1974 under the auspices of the IMO. The Athens Convention is thus the main international convention relating to the carriage of passengers and their luggage by sea. The intention of the Convention is to attribute liability to the carrier for loss or damages suffered by a passenger during the voyage on a seagoing vessel. Thus the Convention establishes the carrier's liability for damages or losses suffered by the passenger if the incident causing the damage occurred during the voyage and were due to the fault or neglect of the carrier.

However, the carrier can limit his liability in case of death of, or personal injuries to a passenger, but restriction of the passenger to recovery is not stated, therefore claims can be pursued by any person for the damages suffered as a result of the death of or personal injury to a passenger, including loss of or damage to luggage.

This provision allows the third party to claim for damages plus consequential loss. The question is whether the domestic law of Nigeria recognise the claim. The mentioned assertion has to be due to the fault or neglect of the carrier or his servant or agent acting within the scope of his employment, though the burden is on the claimant to prove.

The first amendment to the 1974 Athens Convention occurred on November 19 of 1976 (1976 Protocol) and entered into force on April 30, 1989. This 1976 Protocol altered the usage of the "Poincare Franc" based on the official value of gold as the applicable unit of account by the 1974 Convention to the Special Drawing Right. In 1990 another Protocol was adopted. It was established to enter into force 90 days after being accepted by 10 states. However only 4 acceptances were received, thus the 1990 Protocol never entered into force.

The main aim of the 1990 Protocol was to increase the amount of the compensation available in the event of death or injury to 175,000 SDR and 1,800 SDR for loss or damage to the cabin luggage and 10,000 SDR for loss of or damage to vehicles.<sup>5</sup> Neither

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<sup>5</sup> 1990 Protocol.

the 1974 Convention nor its amendment of 1976 was adequate to meet the international community expectations, and for that reason the Protocol never entered into force.

In October 2000, the Legal Committee of IMO met in an attempt to implement a Protocol amending the 1974 Athens Convention relating to the carriage of passengers and their luggage by sea and its respective Protocols. The Committee met on the completed Protocol with a view to achieving a consensus. However, early in the course of the meeting it became apparent that the consensus could not be reached on a number of important items. The Legal Committee therefore took off a number of priorities which were causing disagreement among the committee members.

Among the reasons that contributed to these agreements were two proposals supported by Protection and Indemnity Clubs (P&I Club). The first of the two proposals was a global liability limit of 90 million of SDR (Special Drawing Right) approximately 122,2 million per ship for any event which has caused damage to the passenger. The proposal created many different opinions from the delegates ranging from the belief that a global limit might be warranted but, the amount of 90 million SDR per ship was too high for some delegates and too low for another, as a result the delegates failed to reach a consensus on either of these two items.

The second proposal where consensus was not achieved was on the establishment of the limit of liability with regard to claims brought by individual passengers and authorized jurisdiction for the proposed right of a direct action against the insurance company. Currently the Convention limits the liability of a shipowner to any individual claim to 46,666 SDR per ship, approximately \$58,300 millions.

A State party that is part of the International Monetary Fund (IMF) is allowed to convert into its national currency, therefore Nigeria being a party to the IMF can convert the said amount into Naira which is the national currency of the Federal Republic of Nigeria.

On 1<sup>st</sup> November 2002 the Protocol was signed and made provisions for compulsory insurance to cover passenger and an adequate compensation for death and personal injuries claims and for loss or damages raising significantly the limits of liability based

on well accepted principles applied in existing liability and fault based liability system with a strict liability for shipping related incidents backed by the requirements that carrier take out compulsory insurance to cover these potential claims. The Athens Convention and the 2002 Protocol are to be known as Athens Convention+ Relating to the Carriage of Passengers and their Luggage by Sea 2002.

The objective of the Convention is to promote and ensure uniform application and compliance with international standards as it concerns carriage of passengers and their luggage by sea on international routes. In comparison with the current legal basis with the ratification of the Convention, several new provisions of legal regulation will come into force, for example, specific liability regime accompanied by the carrier's fault in certain circumstances, compulsory insurance (with right of direct action by claimants against insurers), and limits of liability.

The new provisions on the one hand will ensure the rights of the passenger to get compensation for the damage suffered in a clear cut manner and, on the other hand, the possibility of the carrier to limit his liability in the cases of huge incidents and great financial losses shall depend on the Convention to be applied.

The liability of the carrier for death or personal injury to a passenger is limited to 250.000 SDR (about \$325,000 US) per passenger on each distinct occasion. If the losses exceed the limits the carrier is further liable up to a limit of 400,000 SDR (about \$524,000 US) per passenger on each distinct occasion unless the carrier proves that the incident which caused the loss occurred without his fault or neglect.

The carrier responsibility can be excluded if he proves that the incident resulted from an act of war, hostilities, insurrection or resulted from a phenomenon of an exceptional character or was wholly caused by an act or omission done with the intent to cause the incident by a third party. The liability of the carrier for loss of or damage to vehicles including all luggage carried in or on the vehicle is limited to 12, 7000 SDR (about 16,250) per vehicle, per carriage. The liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR (about \$4,930 US) per passenger, per carriage; for loss of or damage to cabin luggage is limited to 2,250 SDR approximately \$2,925 US.



The limits contained in the Athens Convention 2002 set a maximum limit, empowering, but not obliging national courts to compensate for death, injury or damages up to these limits. However by agreement, the carrier and the passenger may agree that the carrier liability shall be subject to a deduction as long as such deduction does not exceed the 330 SDR in the case of damage to a vehicle and not exceeding the 149 SDR per passenger in case of loss of or damage to the luggage. Those significant increases of liability presented by the protocol were made to reflect the present world condition and the mechanism for raising the limits in the future has been made easier.<sup>6</sup>

It is also stated that if States opted to ratify the Athens Convention 2002, they would be obliged to denounce the 1974 Convention and its 1976 Protocol if they are party of one of them.

## **The purpose of the Bill**

The draft law is proposed to ratify the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 2002 (hereinafter referred to as “the Convention”).

The Convention establishes a regime of liability for damage suffered by passengers and their luggage carried on a seagoing vessel, sets limits of carrier’s liability, introduces compulsory insurance to cover passengers on ships, and introduces other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes. These include supplementing the fault-based liability system by a specific liability regime for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims.

The IMO Reservation and Guidelines 2006 propose the implementation of the Convention in relation to the limitation of liability for carriers and a limitation for

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<sup>6</sup> 1990 Protocol to the Athens Convention.

compulsory insurance for acts of terrorism, taking into account the current state of the insurance market. This Reservation provides for a further limit of 250,000 SDR per passenger for each distinct occasion or 340,000 SDR per ship whichever is lower. This draft law incorporates the Reservation and Guideline as part of the Schedule to the proposed Bill.

## **The current maritime legislation in Nigeria**

The Cabotage Act of the Federal Republic of Nigeria (FRN) regulates domestic voyages for the Carriage of Passengers and their Luggage by Sea. The Regulations for the Carriage of Passengers and Luggage by Sea is approved by the Minister of Transport and the Nigeria Maritime Administration. The Cabotage Act of 2003 of the Federal Republic of Nigeria covers the scope of the liability of the carrier only in performance of domestic voyages.

Provisions of the Act define the common principles of carrier's civil liability for damage suffered by passengers and their luggage carried on a seagoing vessel. If an incident is established, there is no limitation of carrier's liability under the norms of the Act or under the provisions of the Law on Merchant Shipping.

As there are no limitations of the carrier's liability in the aforementioned Acts, the situation remains the same in the matter described. Carrier's performance under the general principles of carrier's civil liability which are embodied in the Merchant Shipping Act of the FRN 2007 and the Cabotage Act of the FRN section 2 paragraphs b to d regulates the domestic carriage of passengers by sea though the 2002 Protocol does not cover such carriage.

The Maritime Administration and Safety Agency of the Federal Republic of Nigeria declares that the carrier can limit his liability according to the provisions set in the Law on Merchant Shipping.

Part XXV sections 334, 335, 358, 359 and 360 of the Law on Merchant Shipping of the Federal Republic of Nigeria sets rules on the carrier's liability for infliction of death or

any injury to the health of the passenger, and for any loss of, shortage in, or damage to the luggage. It is stated there that the carrier shall be liable under the Code of the Federal Republic of Nigeria for infliction of death or any injury to the health of the passenger.

The Code sets general rules and provisions as regards to the limitation of the carrier's liability. Section 2 paragraphs a and b of the Cabotage Act states that carriage conditions shall be laid down by this Act and the various modes of transport, other laws, international agreements to which the Federal Republic of Nigeria is a party as well as other transport legislation.

However sections 358 (2) and 359 of the Law on Merchant Shipping prescribes other conditions, the procedure and extent of the carrier's liability for infliction of death or any injury to the health of the passenger, the international agreements shall prevail.

With respect to the limitation of liability for maritime claims, the Federal Republic of Nigeria ratified the 1976 International Convention on Limitation of Liability for Maritime Claims (LLMC) and the 1974 Athens Convention. The regime of liability for damage suffered by passengers carried on a seagoing vessel will be governed by the 1974 Athens Convention and the 1976 LLMC until Nigeria adopts the 2002 Athens Protocol.

## **THE ATHENS CONVENTION 2002**

The 1974 Athens Convention sought to govern liability of ship owners. However, there was still a need to ensure that ship owners would be able to meet the liabilities arising from the operation of their ships and for protecting the rights of passengers carried by sea. Thus, the IMO Legal Committee in October 1996, sought to implement a Protocol to the 1974 Athens Convention (hereinafter called the Protocol) to address the inadequacies of the 1974 Convention and to update the said Convention. In November 2002, the IMO adopted the text of the Protocol of 2002. Although, the Protocol has not yet entered into force, this chapter will analyze the Protocol by identifying and explaining the changes which the Protocol will introduce once it has entered into force. Thus, it is within this framework that this Bill is to modify and domesticate the international position of the carriage of passengers and their luggage by sea in the Federal Republic of Nigeria.

### **ARTICLE 1**

The first notable change which the Protocol seeks to amend is in respect of the Definitions. Article 1 of the Protocol expands Article 1 of the 1974 Convention by introducing definitions for the words “Convention”, “Organization” and “Secretary-General”.

### **ARTICLE 2**

Article 2 replaces Article 1 (1) of the 1974 Convention. However, the definition of “Carrier” and “Performing Carrier” remains as in the Athens Convention. Under this Article, the performing carrier can be the owner himself. The Article defines who a carrier is but it fails to define who the passenger is or what the position of the passenger is. It is submitted that the Protocol ought to have made a clear distinction between the owner and the passenger.

The Article also explains what is meant by the words “*carrier who actually performs the whole or a part of the carriage*” which appears in the definition of “performing carrier” as “the performing carrier *or, the carrier actually performs the carriage, the carrier.*”<sup>7</sup>

The reason for the insertion of this new definition may appear somewhat obscure. However, the true understanding of this obscure provision can only be garnered in the context of Article 5 of the Protocol by which Article 4 *bis*-Compulsory Insurance.

Article 4 *bis* imposes on “*any carrier who actually performs the whole or part of a carriage*” an obligation to maintain insurance or other financial security. The reason for the new definition therefore becomes apparent. It is to ensure that the compulsory insurance/security requirement applies to whosoever performs the carriage whether he is the contractual carrier or a performing carrier.

This new definition is not necessary in order to make sense of Article 4 *bis* which clearly states that it is the “carrier who actually performs the whole or part of the carriage” who is obliged to maintain insurance. Whether he is the contractual carrier or merely a performing carrier is irrelevant in this context. He knows who he is and he knows what he is expected to do.<sup>8</sup>

### **ARTICLE 3**

Article 3 replaces Articles 1 (10) of the 1974 Convention. This Article states that:

***“Article 1, paragraph 10 of the Convention is replaced by the following:  
(1) “Organization” means the International Maritime Organization.***

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<sup>7</sup> Article 2(1)(c) Athens Protocol 2002.

<sup>8</sup> Griggs, Williams and Farr “Limitation of Liability for Maritime Claims”pg.112.

*(2) The following text is added as Article 1, paragraph 11, of the Convention:*

**11. “Secretary-General” means the Secretary-General of the Organization.<sup>9</sup>**

This Article merely solidifies the definitions referred to in Article 1 of the Athens Convention to the effect that references to the “Organization” are to be treated as references to IMO and references to the “Secretary-General” are to be treated as a reference to the Secretary-General of the IMO.

#### **ARTICLE 4**

This Article relates to liability of the Carrier which is an important aspect in the liability regime. The Article drastically amends Article 3 of the Convention which was based on fault. Article 4 provides a figure for the limit of liability that is the carrier’s liability should not exceed 250,000 units of account unless he proves that the incident was as a result of;

*an act of war, ... insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with the intent to cause the incident by a third party.<sup>10</sup>*

With the limit of liability imposed on the carrier by the Protocol, the Protocol states that if the loss exceeds the stated 250,000 units of account, the “*carrier shall be further liable unless the carrier proves that ... the loss occurred without the fault or neglect of the carrier.*”<sup>11</sup> This fault and neglect of the carrier is also extended to his servants and agents acting within the scope of their employment.

Furthermore, the carrier is liable for death or personal injury caused by a non shipping incident if it found that the incident was as a result of his fault or neglect. The element of fault is introduced into this provision and the burden of proof shifts from the owner to the claimant.

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<sup>9</sup> Article 3 2002 Athens Convention Protocol.

<sup>10</sup> Article 4(1) 2002 Protocol.

<sup>11</sup> Ibid.

Similarly, the carrier is liable for loss or damage to cabin luggage if it was as a result of his fault or negligence. There is a presumption of fault or neglect with respect to loss or damage to cabin luggage if the loss or damage is caused by the shipping incident.

In respect of luggage not being cabin luggage, the carrier will be liable unless he can prove that the loss of or damage to the luggage was done without his fault or neglect.

For purposes of precision, shipping incident means “*shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship*”<sup>12</sup>

The Protocol inserts the phrase “defect of the ship”.

*The intention behind this wording .... makes it clear that the strict liability up to the 250,000 SDR limit only applies if the defect which gives rise to the claim is in the parts of the ship which are dedicated to navigation, propulsion, steering, handling and in the parts dedicated to passenger safety and evacuation. However, the wording is limited in scope as it does not embrace ... the ship which is devoted to hotel functions.<sup>13</sup> The thought process relation to this re-definition was sound, but the drafting is defective-raising more questions than it answers.<sup>14</sup>*

“**Loss**” as contained in this Article does not include punitive or exemplary damages. Further, the loss in the context of this Article only relates to loss arising from incidents that occurred during the course of the carriage and the claimant has the burden of proving that such loss occurred during the course of the carriage and also the extent of the loss.

This provision makes it clear that the carrier has a right against a third party or the defence of contributory negligence and a right of limitation under Articles 7 and 8 of this Convention and such rights shall not be prejudice by any provisions of the Convention. However, the carrier still has a right to limit his liability, and a defence of contributory negligence and to pursue rights of recourse against any third parties.

Article 3 of the 2002 Protocol expands the presumption of fault or neglect as the Article further provides that in respect of loss of luggage, other than cabin luggage, the

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<sup>12</sup> Article 4 (5)(a) 2002 Athens Convention Protocol.

<sup>13</sup> Griggs, Williams and Farr “Limitation of Liability for Maritime Claims” pg. 115.

<sup>14</sup> Ibid.

presumption of fault or neglect applies, irrespective of whether the cause of the loss was a maritime incident or not. However, it is a rebuttable presumption. Finally, Article 4 places the burden of proof on the claimant, to prove that the death or personal injury or loss of cabin luggage does not arise from a maritime incident.

Article 4 of the 2002 Protocol has caused no problems in practice because “defect in the ship” has never been a potential area for disagreement. Experience indicates that operators of passenger ships are generally not looking for reasons to reject claims and would certainly not ... be rejecting a claim simply on the grounds that the claimant had failed to discharge the burden of proof<sup>15</sup>.

The Article further provides that whether a claim arises out of shipping or a non-shipping incident, the determination of the issue will be more beneficial for the claimants if he falls within the definition of who is a claimant under the Convention. This would enable him to have a direct action against the insurer or other provider of security as the carrier will be strictly liable up to 250,000 SDR. Finally, it is submitted that where presumptions of fault or neglect occur within Article 3, the party is given a chance to discharge that burden once evidence is produced.

The Protocol has further imposed strict liability on the carrier for loss of life and personal injury resulting from a shipping incident to the sum of 250,000 SDR. This strict liability provision is to replace the less stringent presumption of fault under the Athens Convention in relation to losses arising from shipping incidents. Under the revised Article 3 the carrier will be further liable up to the limit of 400,000 SDR stated in Article 7. If the loss arises from a shipping incident though unless the carrier proves that the loss occurred without his fault or neglect. If the loss arises from a non-shipping incident the carrier will only be liable if the claimant can prove the carrier’s fault or neglect.<sup>16</sup>

With regard to the presumption of fault in relation to luggage (cabin or non-cabin) there remains a presumption of fault in relation to cabin luggage where there has been a “shipping incident”. However, the Protocol provides no change in the presumption of fault in relation to loss or damage to luggage that arises from a non-shipping incident. This position has changed under the Protocol in that the carrier has to prove that the loss

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<sup>15</sup> Griggs, Williams and Farr “Limitation of Liability for Maritime Claims” pg. 114.

<sup>16</sup> Ibid.



occurred without his fault or neglect whereas under the Athens Convention it was for the claimant to prove fault or neglect.

It is submitted that the new Article 3 is stricter than Article 3 under the Athens Convention 1974 which it is designed to replace. The provision is designed to protect the innocent passenger by imposing a degree of strict liability against the carrier up to a certain limit. It is argued that it would not have been sufficient to maintain the presumption of fault rather than introduce concepts of strict liability. The introduction of the limitation fund in Article 3 and another higher limit in Article 7 raises uncertainty. The Protocol has further provided not less than 10 different provisions regarding burden of proof in the new Article 3 which makes it more complex for a passenger to discharge his burden under the provisions of Article 3 and also left room for interpretation.<sup>17</sup>

### **COMPULSORY INSURANCE**

Article 5 of the Protocol inserts Article 4 bis to the Convention which introduces the element of compulsory insurance. The Article states that where a vessel is licensed to carry more than 12 passengers, the carrier who actually performs the carriage is required to maintain insurance or other financial security to cover liability for loss of life and personal injury to passengers. That insurance will be for not less than 250,000 SDR per passenger on each distinct occasion unlike under the LLMC Convention which provides for 175,000 SDR for each carriage.

Secondly, the Protocol makes it mandatory for a ship to carry a certificate providing the existence of insurance cover or other financial security and that obligation rests upon the State parties to the Convention. The State party can delegate the issuance of certificates. However, if it chooses to delegate this task, it must ensure *“the completeness and accuracy of the certificate so issued* and expect to guarantee. The State party must also notify the Secretary General of the IMO of this delegation.

Under the Protocol, in order to qualify, the insurance or other financial security can not be terminated for at least 3 months' without notice. Also a certificate should indicate when the insurance or other financial security expires through efflux of time. Article 4 bis

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<sup>17</sup> Griggs, Williams and Farr “Limitation of Liability for Maritime Claims” pg. 116.

contains extensive provision regarding sources of information and all State parties to the Convention must recognise the certificates issued by ratifying States.

One of the most important provisions in the Protocol is Article 4 bis (10) is the concept of direct action. This means that the claimants may pursue their claims directly against the insurer or other person providing financial security. The intention of this is to improve the prospects of a claimant getting paid his just claim promptly without the need to trace and pursue the carrier.<sup>18</sup> It is argued that if the claimant is allowed to pursue his claim directly against the insurers, the insurers or provider of financial security should be entitled to limit their liability even if the carrier, by his conduct, has forfeited the right to limit. The insurer or provider of financial security may defend the claim on the basis that the damage resulted from the misconduct of the carrier.

If the insurance companies were allowed to proffer this defence then passengers would not be fully protected. It was contrary to public policy and to statute law for insurance companies to offer cover against the acts of the assured. So to protect the claimant, if the claimant proceeded against the insurer or provider of financial security he may join the carrier and performing carrier to the proceedings.

The Protocol also provides that once payment is made by the insurance company then liability is discharged. However, the payments are only 'to the extent of the amount paid'. Article 4 bis also places an obligation upon flag States to ensure compliance. Flag States should ensure that vessels flying their flag do not operate without proper certificates of insurance. States Parties are to ensure that ships entering or leaving their ports should have the insurance certificate on board.

Finally, in this Article there is a provision modifying the certification requirement in respect of State owned vessels.<sup>19</sup>

Another important feature of this Article is that it places an obligation on the carrier to produce evidence of insurance or other financial security up to 250,000 SDR per

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<sup>18</sup> **Ibid.**

<sup>19</sup> **Griggs, Williams and Farr** "Limitation of Liability for Maritime Claims" pg. 119.

passenger on each distinct occasion. This is another way in which to protect the claimant. It is not a coincidence that this figure is the same as the strict liability limit in Article 3 per passenger. The same concept of direct action is applicable in the following Conventions-Civil Liability Convention (CLC), Hazardous and Noxious Substance (HNS) and Bunker Conventions.<sup>20</sup>

## **ARTICLE 6**

Article 6 of the Protocol concerns the limitation of liability for death or personal injury. Article 6 replaces Article 7 of the Convention and set the limits of liability of the carrier for loss of life or personal injury to a passenger to 400,000 SDR per capita on each distinct occasion.<sup>21</sup> This creates a liability tier which is contained in the revised Article 3(1). The limit in Article 7 is invoked once the limit of liability expressed in Article 3 is exceeded and as such the carrier can limit his liability up to 400,000 SDR. In relation to claims in excess of the Article 3 limit, the carrier will be liable unless he can prove that the incident causing the loss occurred without his fault or neglect.

Under the Article 7 provision, States have the option to increase the limit. It is now clear that this higher national limit will not only apply to national flag carriers but will apply equally to foreign flag vessels visiting the ports of a State Party.

## **ARTICLE 7**

Article 8 of the Convention concerns the limit of liability for loss of or damage to luggage and vehicles and introduces new limits in respect of luggage. The new limit for cabin luggage is 2,250 SDR per passenger per carriage and the limit for non-cabin luggage is 3,375 SDR. The vehicle limit is 12,700 SDR per vehicle per carriage.<sup>22</sup>

## **ARTICLE 8**

Article 8 replaces Article 9 of the Convention. Article 8 identifies a single unit of account for limitation purposes. The unit of account is known as the Special Drawing Right. The

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<sup>20</sup> **Ibid.**

<sup>21</sup> **Article 6(1) 2002 Athens Convention Protocol.**

<sup>22</sup> **Article 7(1), (2) and (3) 2002 Athens Convention Protocol.**

new Article 9 gives States rights to convert SDR into national currencies. For example, Nigeria reserves the right to convert SDR into Naira.

## **ARTICLE 9**

Article 9 of the Protocol changes the third paragraph of Article 16 which stipulates the time bar for actions. Under this new Article 16(3) the limitation periods may be suspended or interrupted by the court seized of the case<sup>23</sup>. The section then goes on to provide that in no case shall an action under the Convention be brought after the expiration of *“the period of five years from the date when the passenger disembarked or when the passenger should have disembarked, ... from the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.”*<sup>24</sup>.

This provision complicates matters more than in the 1974 Convention. It would mean that Article 16 would contain no fewer than 3 limitation periods; 2 years basic, extendable to 3 years and (possibly) 5 years. Clearly the 5 year limit is intended to be an absolute final deadline beyond which the limitation period may not be extended even if the claimant did not know and ought to have reasonably known of the injury.<sup>25</sup> The 3 different circumstances that the claimant may institute an action against the carrier has imposed hardship on the claimant because if the claimant experiences death, personal injury or loss of or damage to luggage in one carriage, then he has 3 different limitation periods to be contended with.

## **ARTICLE 10**

The court of competent jurisdiction is governed by Article 17 of the 1974 Convention. Article 10 of the Protocol amends Article 17 of the Convention. It adds paragraph 17(2) which seeks to extend the protection afforded to the claimant. However, the list of Courts remains the same. With the amendment there are 3 consequences; the insurer can be sued in the State of domicile of the claimant or in the place of the making of the contract if he has a place of business there even if the carrier did not have a place of business there.

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<sup>23</sup> Article 9 2002 Athens Convention Protocol.

<sup>24</sup> Ibid.

<sup>25</sup> Griggs, Williams and Farr “Limitation of Liability for Maritime Claims”pg. 122.

Secondly, the insurer may have to face claims in the court of a State where the carrier has a place of business even if the business does not exist. Thirdly, the insurer may face claims in multiple jurisdictions because he can be exposed in different forums and this could be costly.<sup>26</sup>

Articles 3 and 4 of the Convention list claims for loss of life, personal injury and loss or damage to luggage. The new Article 17 lists the jurisdictions which are competent to hear cases arising under Articles 3 and 4 of the Convention.

### **ARTICLE 11**

The recognition and enforcement provisions are governed by Article 11 of the Protocol and Article 17 of the 1974 Convention. Article 11 of the Protocol adds Article 17 bis of the Convention. This Article provides that if a monetary financial judgment is made by a competent Court, it shall be recognized and enforced in the Courts of State parties unless the judgment was obtained by fraud or the defendant did not have reasonable notice of the action nor a fair opportunity to defend himself. The provision does not make provision for review of the merits of the judgment by the enforcing court. This provision is favourable to the ship owner because it limits the issue of delay.

### **ARTICLE 12**

This Article contains a new text for Article 18 of the Convention which deals with the invalidity of certain contractual provisions. The Convention has made provision for the State to increase the liability but not to decrease the amount stipulated in the Convention. With the invalidity of certain contractual provisions, the Protocol seeks again to protect the claimant. Those provisions which seek to lower the limits of liability than that provided in the Convention, the Protocol by virtue of Article 18 invalidates those contractual provisions which seek to shift the burden of proof away from the carrier and seek to restrict the range of courts with competent jurisdiction under Article 17 are also void.

### **ARTICLE 13**

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<sup>26</sup> Mr. N. Martinez Lecture IMLI Notes February 24<sup>th</sup>, 2009.

Article 13 of the Protocol introduces minor changes from Article 20 of the Athens Convention by stating that “*any amendment or Protocol*” to the Paris and Vienna Nuclear Convention to which reference is made in the Article.<sup>27</sup>

### **ARTICLE 15**

This Article states that the Athens Convention and the Protocol shall be “read and interpreted together as one single instrument incorporating all the amendments introduced by the Protocol. For the avoidance of doubt, Article 15 also states that the Protocol will apply only to “*claims arising out of occurrences which take place after the entry into force for each State*”<sup>28</sup>.

### **ARTICLE 16**

The following text is added as Article 22 bis of the Convention which deal with the final clauses of the Convention.

*“22. The final clauses of this Convention shall be Articles 17 to 25 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.”*

This Article introduces Article 17 to 25 as the final clauses of the Protocol.

### **ARTICLE 17**

**Article 17** governs signature, ratification, acceptance, approval and accession.

*“17 (1). This Protocol shall be open for signature at the headquarters of the Organization from 1 May 2003 until 30 April 2004 and shall thereafter remain open for accession.*

*2. States may express their consent to be bound by this Protocol by:*

*(a) signature without reservation as to ratification, acceptance or approval; or*

*(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or*

*(c) accession.*

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<sup>27</sup>Griggs, Williams and Far “Limitation of Liability for Maritime Claims” r pg. 125.

<sup>28</sup> Article 15(2) 2002 Athens Convention Protocol.

*3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.*

*4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Protocol with respect to all existing States Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those States Parties shall be deemed to apply to this Protocol as modified by the amendment.*

*5. A State shall not express its consent to be bound by this Protocol unless, if Party thereto, it denounces:*

*(a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974;*

*(b) the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 19 November 1976; and*

*(c) the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 29 March 1990,*

*With effect from the time that this Protocol will enter into force for that State in accordance with Article 20.”*

This Article is the first of the so-called Final Clauses and deals with signature, ratification, acceptance, approval and accession. The Protocol will be open for signature at IMO from 1 May 2003 until 30 April 2004 and thereafter shall remain open for accession.

The Article is very detailed in that it lists the various ways in which a State may express its consent to be bound by the Protocol. It also indicates exactly what steps a ratifying State must take in order to complete the ratification process. Nigeria has not ratified this Protocol up to the present day. But in the writers opinion ratification of the said convention will be beneficial to shipping industry in Nigeria

As the Protocol is all encompassing, the Article contains an important provision which requires ratifying States to denounce the Athens Convention of 1974 together with the 1976 and 1990 Protocols. Presumably this means that ratifying States should denounce

the Athens Convention of 1974 in its unamended form and then replace that Convention with the revised consolidated text.

## **ARTICLE 18**

Article 18 provides that:

*“18 1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare that this Protocol shall extend to all its territorial units or only to one or more of them, and may modify this declaration by submitting another declaration at any time.*

*2. Any such declaration shall be notified to the Secretary-General and shall expressly the territorial units to which this Protocol applies.*

*3. In relation to a State Party which has made such a declaration:*

*(a) references to the State of a ship’s registry and, in relating to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;*

*(b) references to the requirements of national law, national limit of liability and national currency shall be construed respectively as references to the requirements of the law, the limit of liability and the currency of the relevant territorial unit; and*

*(c) references to courts, and to judgments which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgments which must be recognized in, the relevant territorial unit.”*

Article 18 governs the conflict of laws issue as it confronts the issue of States with more than one system of law. This Article is not new in international Conventions. The Bunker Convention contains an Article of this nature. The Article contained in the Bunker Convention seeks to deal with the problems created by the relationship between China and Hong Kong/China. Hong Kong/China retains its own legal system for the time being though remaining part of China for purposes of the International Convention. This Article allows China to declare that the Protocol shall extend to all its territorial units or only to one or more of them. It is submitted that once the Protocol comes into force, the same



issue will arise and will be dealt with in the same manner as treated in the Bunkers Convention.

## **ARTICLE 19**

Article 19 governs the position in relation to Regional Economic Integration Organizations. Article 19 states:

*“19 (1) A Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, may sign, ratify, accept, approve or accede to this Protocol. A Regional Economic Integration Organization which is a Party to this Protocol shall have the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol.*

*2. Where a Regional Economic Integration Organization exercise its right of vote in matters over which it has competence, it shall have a number of votes equal to the number of its Member states which are Parties to this Protocol and which have transferred competence to it over the matter in question. A Regional Economic Integration Organization shall not exercise its right to vote if its member States exercise theirs, and vice versa.*

*3. Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.*

*4. At the time of signature, ratification, acceptance, approval or accession the Regional Economic Integration Organization shall make a declaration to the Secretary-General specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organization by its Member States which are signatories or Parties to this Protocol and any other relevant restrictions as to the scope of that competence. The Regional Economic Integration Organization shall promptly notify the Secretary-General of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph. Any such declarations shall be made available by the Secretary-General pursuant to Article 24 of this Protocol.*

***5. States Parties which are Member States of a Regional Economic Integration Organization which is a Party to this Protocol shall be presumed to have competence over all matters governed by this Protocol in respect of which transfers of competence to the Organization have not been specifically declared or notified under paragraph 4.”***

This new Article is innovative as it takes into account the position in regional organizations such as the European Union. States of the European Union in December 2000 adopted Regulation (EC) 44-2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. The European Commission took the position before the Diplomatic Conference that by adopting common rules on these matters, Member States of the European Union have effectively transferred their national competence in this area to the Community. Article 19 is designed to deal with this problem. The proposal initially met with some hostility from non-EU delegates at the Legal Committee Session before the Diplomatic Conference but, in the event, was accepted at the Diplomatic Conference.

The amendment of this provision by the EU may bring a set back to the purpose of the Convention, but at the same time the African Union can come up with their own regulation to suit their purpose.

## **ARTICLE 20**

Article 20 state when the Protocol shall enter into force. This is important as to date, the Convention has not entered into force.

***“2 1. This Protocol shall enter into force twelve months following the date on which 10 States have either signed it without reservation as to ratification acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.***

***2. For any State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument, but not before this Protocol has entered into force in agreement with paragraph 1.”***

As with most Conventions, the Protocol will enter into force 12 months following the date on which 10 States have acceded to the Protocol. The figure for the number of required States is, traditionally, only inserted at the final stages of the Diplomatic Conference. The Athens Convention itself set a requirement of 10 States and it was deemed appropriate to accept the same number of States for the Protocol.

As far as each ratifying State is concerned the Protocol will enter into force three months after the date on which that State has deposited the appropriate instruments at IMO.

### **ARTICLE 21**

Article 21 governs the way in which a State Party shall at any time denounce the Protocol. Article 21 State:

*“21. 1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol comes into forces for that State.*

*2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.*

*3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.*

*4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 25 thereof shall not be construed in any way as a denunciation of the Convention as revised by this Protocol.”*

Denunciation will become effective not less than 12 months after the notice of denunciation has been deposited with IMO.

### **ARTICLE 22**

Article 22 governs the revision and amendment procedure for the Protocol. It provides that:

*“22 1 A Conference for the purpose of revising or amending this Protocol may be convened by the Organization.*

*2. The organization shall convene a Conference of States Parties to this Protocol for revising or emending this Protocol at the request of not less than one-third of the States Parties.”*

This Article deals with revision and amendment of the Protocol and specifies how and by whom a Conference to consider revision or amendment may be called.

### **ARTICLE 23**

The amendment of limits procedure is stated in Article 23 which provide:

*“23.1. Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3, paragraph 1, Article 4 bis, paragraph 1, Article 7, paragraph 1 and Article 8 of the Convention as revised by this Protocol.*

*2. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3, paragraph 1, Article 4 bis, paragraph 1, Article 7, paragraph 1, and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary-General to all members of the Organization and to all State Parties.*

*3. Any amendment proposed and circulated as above shall be submitted to the legal Committee of the Organization (hereinafter referred to as “the Legal Committee”) for consideration at a date at least six months after the date of its circulation.*

*4. All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.*

*5. Amendments shall be adopted by a two-thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States Parties to the Convention as revised by this Protocol shall be present at the time of voting.*

*6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.*

*7. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.*

*(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol increased by 6 percent per year calculated on a compound basis from the date on which this Protocol was opened for signature.*

*(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol multiplied by three.*

*8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all State Parties. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.*

*9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.*

*10. All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.*

*11. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.”*

The limits specified in Articles 3(1), Article 4 bis (1) Article 7(1) and Article 8 of the Convention as amended by the Protocol can be governed by a quick amendment procedure which is governed by Article 23. The Article provides that at the request of at

least half (but not less than six) of the States Parties to the Protocol amendments to limits may be effected by means of a proposal which must be circulated not less than six months before the proposal is to be considered by the legal Committee. Ratification of the proposed amendments requires a two thirds majority of the States Parties to the Convention present and voting.

In considering any amendments to the limits, the Legal Committee is required to take into account *“the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effects of the proposed amendment on the cost of insurance”*. To avoid too many changes it is provided that no amendment of limits shall in any event be considered less than five years from the date of entry into force of a previous amendment made under the quick amendment procedure. There is also a cap on the amount by which the limits may be increased under the quick amendment procedure. This is calculated at the rate of 6% per annum on a compound basis from the date on which the Protocol was opened for signature. A further cap is to be placed on the amount of increase-it may not exceed an amount which corresponds to the limit stated in the Convention (as amended by the proposed Protocol) multiplied by three.

## **ARTICLE 24**

Article 24 states where the Protocol may be deposited. It provides that:

*“24.1 This Protocol and any amendments adapted under Article 23 shall be deposited with the Secretary-General.*

*2. The Secretary-General shall:*

*(a) inform all States which have signed or acceded to this Protocol of:*

- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;*
- (ii) each declaration and commutation under Article 9, paragraphs 2 and 3, Article 18, paragraph 1 and Article 19, paragraph 4 of the Convention as revised by this Protocol;*
- (iii) the date of entry into force of this Protocol;*
- (i) any proposal to amend the limits which has been made in accordance with Article 23, paragraph 2 of this Protocol*

- (ii) any amendment which has been adopted in accordance with Article 23, paragraph 5 of this Protocol;*
  - (iii) any amendment deemed to have been accepted under Article 23, paragraph 8 of this Protocol, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;*
  - (iv) any communication called for by any Article of this Protocol;*
- (b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.*

*3. As soon as this Protocol comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.”*

This Article names the Secretary General of IMO as the person with whom the Protocol and amendments must be deposited and specifies what his duties are in that regard.

As soon as the Protocol comes in to force the Secretary General is required to transmit the text to the UN Secretariat for registration and publication.

## **ARTICLE 25**

This Article deals with languages of publication and states that a single original Protocol shall be established in Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

## **RESOLUTIONS**

It was felt amongst the delegates at the Diplomatic Conference that the IMO should develop appropriate guidelines on the provision of insurance or other financial security for compensation for claims for death of or personal injury to passengers. Thus, by the Resolution on Framework of Good Practice with respect to Carriers' Liability, the request was made to the IMO not only to develop such guidelines, but it was submitted that these guidelines should establish an appropriate framework of good practice to ensure that all carriers maintain proper insurance or financial security to meet the requirements under the Protocol.

## **RESERVATION AND GUIDELINES**

As the Protocol seems to protect the claimants and extend the rights of the passengers, it is of no surprise that the Protocol which took six years to be produce has bred opposition from the shipowning community and from the liability insurance market (the international Group of P. & I. Clubs in particular). There was concern that the insurance market would not be able to cover the very high potential liabilities of owners of large cruise ships, particularly in war risk, terrorism and non war risk.

## **BASIS FOR THE RATIFICATION OF ATHENS CONVENTION, PROTOCOLS 1990 AND 2002**

For many years before the independence of 1960 and shortly thereafter, Nigeria was regulating its shipping and coastal activities in line with the British legislation, either by direct application of one of the legislation or by deeming it. Nigeria however enacted her own merchant shipping Act two years after independence in 1962.<sup>29</sup> The Nigeria Act was modeled after the British Merchant Shipping Act of 1894 and is still in force though with lots of amendments. A committee to review the Nigeria interest was constituted visa- vise the Federal Minister of Transport law Reform Committee constituted in 1999.

The old and almost obsolete system allowed carriers very wide escape routes as the liability was not even close to being adequate. The offences were enormous but the penalty was mild and insignificant.

The growing development of Nigeria Maritime Industry required global and new approach to meet the international Standard both in practice and Laws regulating the activities.

The Industry globally is witnessing huge and astronomical development as a source of generating revenue or as a means of creating job opportunities to growing number of people.

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<sup>29</sup> Griggs, Williams and Farr, " limitation of liability for maritime claims", P. 339.



In view of the forgoing, there is the need to develop and monitor the maritime industry to meet the international standard and to also monitor its activities. It is therefore not out of place for Nigeria to subscribe to conventions that regulate the activities Maritime related issues globally.

Again, environmental issue is a cogent reason for Nigeria to ratify international conventions, hence, the ratification of International convention for the prevention of pollution from ships 1973/1978 and the annexes thereto:

Convention to intervention on the High seas in cases of threatened oil pollution causalities, 1969: International convention on prevention of Marine pollution by dumping of waste and other matters 1972 etc. These are other related International conventions that Nigeria has ratified.

The huge revenue generation through the coastal line as from tourism attraction and patronage add to the endless reasons why Nigeria must promote the Uniform application and compliance with International standards.

### **RATIFICATION PROCEDURE:**

The implementation of treaties in the Federal Republic of Nigeria is provided for by section 12 of the constitution which provides:

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and

shall not be enacted unless it is ratified by a majority of all the Houses of Assembly of the Federation.

With regards to the Protocol, the initiative to start the process of ratification comes from the Ministry of Transportation, Ministry of Justice or the Ministry of Foreign Affairs. A bill to that effect is sent to the National Assembly and the Senate and it expected to go through the laid down procedures by the constitution and standing rules of both chambers of the National Assembly. The President of the Republic then assents to the bill which becomes an Act of Parliament.

Protocol or Convention as the case may be becomes part of the domestic law of the land once it is published in the official gazette. It then becomes binding on the entire land and applied by the courts as the law of the land.

**ON THE RATIFICATION OF THE ATHENS CONVENTION 2002 RELATING  
TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA**

— \_\_\_\_\_ 2009\_\_ No. \_\_\_\_\_

## **Article 1. Ratification of the Convention**

The Government of the Federal Republic of Nigeria, by Section 12(1) of the 1999 Constitution of the Republic of Nigeria and having regard to Decree No. 16 of 1993 of the Government of the Federal Republic of Nigeria, shall ratify the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 2002.

## **Article 2 National Legislation to the Government of the Federal Republic of Nigeria.**

The Government of the Federal Republic of Nigeria shall within ninety days after entry into force of the Convention prepare amendments to the laws of the Federal Republic of Nigeria, regulating carriage of passengers and their luggage by sea, in compliance with the Convention and to present them to the National Assembly of the Federal Republic of Nigeria.

## **Article 3. Entry into force**

Articles 1 and 2 shall enter into force on the ninetieth day upon entry into force of the Convention.

*I promulgate this Law passed by the National Assembly of the Federal Republic of Nigeria.*

PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA

THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA A PROPOSAL TO  
SUBMIT THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF  
PASSENGERS AND THEIR LUGGAGE BY SEA 2002 TO THE NATIONAL  
ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA FOR RATIFICATION

Government of the Federal Republic of Nigeria r e s o l v e s :

In pursuance - of the Constitution of the Federal Republic of Nigeria , to refer to the President of the Federal Republic of Nigeria a proposal to submit to the National Assembly of the Federal Republic of Nigeria for their ratification of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 2002.

President of the Federal Republic of Nigeria

Alhaji Umaru Musa Yar'Adua

President of the Senate

David Mark

### **EXPLANATORY MEMORANDUM TO THE BILL**

This Bill domesticates the Athens Convention concerning carriage of Passengers and their luggage by sea 2002 and sets out the limitation of liabilities for damages and loss of life and personal injuries to and damage for loss of luggage for passengers and their luggage carried on ships. The Minister of Transportation is bears with the responsibility of supervising the Act

**FEDERAL REPUBLIC OF NIGERIA**

2009 No. ....

**CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND  
THEIR LUGGAGE BY SEA (RATIFICATION AND ENFORCEMENT) BILL**

**ARRANGEMENT OF SECTIONS**

SECTION

Enforcement of the Convention Relating to the Carriage of passengers and their  
Luggage by Sea

1. Powers of the Minister
2. Nigerian Maritime Administration and Safety Agency to administer Act
3. Jurisdiction.
4. Amendment of Cap M11 LFN 2004
5. Release of ship, etc.
6. Restriction on enforcement after giving of security.
7. Power of court to consolidate claims against carriers, etc.
8. Part carriers to account in respect of damage.
9. Insurances of certain risks not invalid.
10. Proof of passengers on board ship.
11. Interpretation
12. Short title and commencement

**SCHEDULE**

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**FEDERAL REPUBLIC OF NIGERIA**

2009 No. ....

**CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND  
THEIR LUGGAGE BY SEA (RATIFICATION AND ENFORCEMENT) BILL**

**A BILL**

**FOR**

**AN ACT TO MAKE PROVISIONS FOR THE RATIFICATION AND  
ENFORCEMENT OF THE ATHENS CONVENTION RELATING TO THE**

## **CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2002 AND FOR CONNECTED PURPOSES**

**ENACTED** by the National Assembly of the Federation of Nigeria. Enforcement of the Convention Relating to the Carriage of Passengers and their Luggage by Sea.

1. The provisions of the Convention which are set out in the Schedule to this Act have the force of law in Nigeria and must be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria. Schedule

### **Powers of the Minister**

2. (1) The Minister -

(a) is the “competent authority” for the purpose of paragraph 2 of Article 4 *bis* of the Convention.

(b) may prescribe rules for the implementation of the Convention and in particular may modify alter or delete any of the provisions of the Convention pursuant to amendments in accordance with the Convention

(2) An Order made under paragraph (b) of subsection (1) of this section shall, while in force, be conclusive evidence that the country is a State Party to the Convention.

(3) Rules made under paragraph (c) of subsection (1) of this section shall not come into force unless the Rules are -

(a) approved by the President; and

(b) published in the *Gazette*

### **Nigerian Maritime Administration and Safety Agency to administer Act**

3. The Nigerian Maritime Administration and Safety Agency established under the Nigerian Maritime Administration and Safety Agency Act 2007 is the agency responsible for the administration of this Act, and is for the purpose of Article 4 *bis*, the agency responsible for the issue of certificates

### **Jurisdiction**

4. The Federal High Court has exclusive jurisdiction over proceedings arising from the interpretation and application of this Act.

**Amendment of Cap M11 LFN 2004**

5. Chapter 81 of Part XI of the Merchant Shipping Act which relates to the liability of ship carriers is repealed.

#### **Power of court to consolidate claims against carriers, etc.**

6. (1) Where any liability is alleged to have been incurred by the carrier in respect of any occurrence in respect of which his liability is limited under this Act, and several claims are made or apprehended in respect of that liability, then, the carrier may apply to a court of competent jurisdiction, and that court may determine the amount of the carrier's liability and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such directions as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the carrier, and as to payment of any costs, as the court thinks just.

(2) In making any distribution in accordance with this section, the court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court in any country outside Nigeria.

(3) No lien or other right in respect of any ship or property shall affect the proportions in which, under this section, any amount is distributed amongst several claimants.

#### **Part carriers to account in respect of damage.**

7. All sums paid for or on account of any loss or damage in respect whereof the liability of carriers is limited under this Act, and all costs incurred in relation thereto, may be brought into account among part carriers of the same ship in the same manner as money disbursed for the use thereof.

#### **Proof of passengers on board ship.**

9. In any proceeding under this Act against the carrier of a ship or share therein with respect to loss of life, any prescribed passenger list shall be received as evidence that the person upon whose death proceedings are taken under this Act was a passenger on board the ship at the time of death.

#### **Interpretation**

12. (1) In this Act, unless the context otherwise requires-  
“carrier” means a person by or on whose behalf a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;  
“Convention” means the International Convention Relating to the Carriage of passengers and their Luggage by Sea 1974 as modified the 2002 Protocol there to

“Minister” means the minister charged with responsibility over maritime transportation;  
“performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship who actually performs the whole or part of the carriage;  
“relevant port”—

(a) in relation to any claim, means the port where the event giving rise to the claim occurred, or, if that event did not occur in a port, the first port of call after the event occurred; and

(b) in relation to a claim for loss of life or personal injury, or for damage to cargo, includes the port of disembarkation or discharge;

“ship” means only a seagoing vessel excluding an air-cushion vehicle

“State Party” means any country in respect of which the Convention is in force, including any country to which the Convention extends by virtue of Article 17 thereof.

### **Short title and commencement**

13. This Act may be cited as the Convention Relating to the Carriage of Passengers and Their Luggage by Sea (Ratification and Enforcement) Act 2008 and shall come into force on a date which the Minister may by Notice appoint.

Section 1

## **SCHEDULE**

### **ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2002**

(Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention)

#### **ARTICLE 1**

##### **Definitions**

In this Convention the following expressions have the meaning hereby assigned to them:

1. (a) "carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;

(b) "performing carrier" means a person other than the carrier, being the carrier, charterer or operator of a ship, who actually performs the whole or a part of the carriage;



(c) "carrier who actually performs the whole or a part of the carriage" means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;

2. "contract of carriage" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

3. "ship" means only a seagoing vessel, excluding an air-cushion vehicle;

4. "passenger" means any person carried in a ship:

(a) under a contract of carriage, or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;

5. "luggage" means any article or vehicle carried by the carrier under a contract of carriage, excluding:

(a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and

(b) live animals

6. "cabin luggage" means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

7. "loss of or damage to luggage" includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

8. "carriage" covers the following periods:

(a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;

(b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;

(c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;

9. "international carriage" means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;

10. "Organization" means the International Maritime Organization.

11. "Secretary-General" means the Secretary-General of the Organization.

### **ARTICLE 1 bis** **Annex**

The annex to this Convention shall constitute an integral part of the Convention.

### **ARTICLE 2** **Application**

1. This Convention shall apply to any international carriage if:
  - (a) the ship is flying the flag of or is registered in a State Party to this Convention, or
  - (b) the contract of carriage has been made in a State Party to this Convention, or
  - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.
  
2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international Convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such Convention, in so far as those provisions have mandatory application to carriage by sea.

### **ARTICLE 3** **Liability of the carrier**

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 each distinct occasion does not exceed 250,000 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 the 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.

2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.

3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

5. For the purposes of this article:

(a) "Shipping incident" means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;

(b) "Fault or neglect of the carrier" includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;

(c) "defect in the ship" means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and

(d) "Loss" shall not include punitive or exemplary damages.

6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Article 7 or 8 of this Convention.

8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

#### **ARTICLE 4**

## **Performing carrier**

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.
2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.
3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.
4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.
5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

## **ARTICLE 4 bis** **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 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 250,000 units of account per passenger on each distinct occasion.
2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:
  - (a) name of ship, distinctive number or letters and port of registry;
  - (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
  - (c) IMO ship identification number;
  - (d) type and duration of security;

- (e) name and principal place of business of insurer or other person providing financial, security and, where appropriate, place of business where the insurance or other financial security is established; and
- (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

3. (a) A State Party may authorize an institution or an organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect. An authority delegated shall not take effect prior to three months from the date from which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

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, 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 other financial security no longer satisfying the requirements of this Article.

7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international

organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

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 defences (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 invoke the defence that the damage resulted from the willful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured 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.

11. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.

12. 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 15.

13. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.

14. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.

15. If insurance or other financial security is not maintained in respect of

a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

## **ARTICLE 5**

### **Valuables**

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

## **ARTICLE 6**

### **Contributory fault**

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

## **ARTICLE 7**

### **Limit of liability for death and personal injury**

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400,000 units of account per passenger 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.

## **ARTICLE 8**

### **Limit of liability for loss of or damage to luggage and vehicles**

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2,250 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12,700 units of account per vehicle, per carriage.
3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3,375 units of account per passenger, per carriage.
4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

## **ARTICLE 9**

### **Unit of Account and conversion**

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.
2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty- five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.
3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.



**ARTICLE 10**  
**Supplementary provisions on limits of liability**

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

**ARTICLE 11**  
**Defenses and limits for carriers' servants**

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

**ARTICLE 12**  
**Aggregation of claims**

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.
3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

**ARTICLE 13**  
**Loss of right to limit liability**

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

#### **ARTICLE 14**

##### **Basis for claims**

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

#### **ARTICLE 15**

##### **Notice of loss or damage to luggage**

1. The passenger shall give written notice to the carrier or his agent:
  - (a) in the case of apparent damage to luggage:
    - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
    - (ii) for all other luggage, before or at the time of its re-delivery;
  - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

#### **ARTICLE 16**

##### **Time-bar for actions**

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
2. The limitation period shall be calculated as follows:
  - (a) in the case of personal injury, from the date of disembarkation of the passenger;
  - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
  - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:

- (a) A period of five years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier
- (b) a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

### **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) the 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) the Court of the State where the contract of 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.

### **ARTICLE 17bis**

#### **Recognition and enforcement**

1. Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:

- (a) where the judgment was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognized and enforced at least to the same extent as under paragraphs 1 and 2.

## **ARTICLE 18**

### **Invalidity of contractual provisions**

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

## **ARTICLE 19**

### **Other Conventions on limitation of liability**

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international Conventions relating to the limitation of liability of carriers of seagoing ships.

## **ARTICLE 20**

### **Nuclear damage**

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.

## **ARTICLE 21**

### **Commercial carriage by public authorities**

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of Article 1.

**ARTICLE 22**  
**Declaration of non-application**

1. Any Party may at the time of signing, ratifying, accepting, approving or acceding to this Convention, declare in writing that it will not give effect to this Convention when the passenger and the carrier are subjects or nationals of that Party.
2. Any declaration made under paragraph 1 of this Article may be withdrawn at any time by notification in writing to the Secretary-General.

**ARTICLE 22bis**  
**Final clauses of the Convention**

The final clauses of this Convention shall be Articles 17 to 25 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

**FINAL CLAUSES**

[Articles 17 to 25 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.]

**ARTICLE 17**  
**Signature, ratification, acceptance, approval and accession**

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 May 2003 until 30 April 2004 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Protocol by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Protocol with respect to all existing States

Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those States Parties shall be deemed to apply to this Protocol as modified by the amendment.

5. A State shall not express its consent to be bound by this Protocol unless, if Party thereto, it denounces:

- (a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974;
- (b) the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 19 November 1976; and
- (c) the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 29 March 1990, with effect from the time that this Protocol will enter into force for that State in accordance with Article 20.

## **ARTICLE 18**

### **States with more than one system of law**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare that this Protocol shall extend to all its territorial units or only to one or more of them, and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Protocol applies.

3. In relation to a State Party which has made such a declaration:

- (a) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;
- (b) references to the requirements of national law, national limit of liability and national currency shall be construed respectively as references to the requirements of the law, the limit of liability and the currency of the relevant territorial unit; and
- (c) references to courts, and to judgments which must be recognised in States Parties, shall be construed as references respectively to courts of, and to judgments which must be recognised in, the relevant territorial unit.

## **ARTICLE 19**

### **Regional Economic Integration Organizations**

1. A Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, may sign, ratify, accept, approve or accede to this Protocol. A

Regional Economic Integration Organization which is a Party to this Protocol shall have the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol.

2. Where a Regional Economic Integration Organization exercises its right of vote in matters over which it has competence, it shall have a number of votes equal to the number of its Member States which are Parties to this Protocol and which have transferred competence to it over the matter in question. A Regional Economic Integration Organization shall not exercise its right to vote if its Member States exercise theirs, and vice versa.

3. Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.

4. At the time of signature, ratification, acceptance, approval or accession the Regional Economic Integration Organization shall make a declaration to the Secretary-General specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organization by its Member States which are signatories or Parties to this Protocol and any other relevant restrictions as to the scope of that competence. The Regional Economic Integration Organization shall promptly notify the Secretary-General of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph. Any such declarations shall be made available by the Secretary-General pursuant to Article 24 of this Protocol. 5 States Parties which are Member States of a Regional Economic Integration Organization which is a Party to this Protocol shall be presumed to have competence over all matters governed by this Protocol in respect of which transfers of competence to the Organization have not been specifically declared or notified under paragraph 4.

## **ARTICLE 20**

### **Entry into force**

1. This Protocol shall enter into force twelve months following the date on which 10 States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For any State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument, but not before this Protocol has entered into force in agreement with paragraph 1.

## **ARTICLE 21**

### **Denunciation**

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 25 thereof shall not be construed in any way as a denunciation of the Convention as revised by this Protocol.

## **ARTICLE 22**

### **Revision and Amendment**

1. A Conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Organization shall convene a Conference of States Parties to this Protocol for revising or amending this Protocol at the request of not less than one-third of the States Parties.

## **ARTICLE 23**

### **Amendment of limits**

1. Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1 and Article 8 of the Convention as revised by this Protocol.
2. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all States Parties.
3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (hereinafter referred to as "the Legal Committee") for consideration at a date at least six months after the date of its circulation.
4. All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
5. Amendments shall be adopted by a two-thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States



Parties to the Convention as revised by this Protocol shall be present at the time of voting.

6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

7. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10. All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

## **ARTICLE 24**

### **Depositary**

1. This Protocol and any amendments adopted under Article 23 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed or acceded to this Protocol of:

- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
  - (ii) each declaration and communication under Article 9, paragraphs 2 and 3, Article 18, paragraph 1 and Article 19, paragraph 4 of the Convention as revised by this Protocol;
  - (iii) the date of entry into force of this Protocol;
  - (iv) any proposal to amend the limits which has been made in accordance with Article 23, paragraph 2 of this Protocol;
  - (v) any amendment which has been adopted in accordance with Article 23, paragraph 5 of this Protocol;
  - (vi) any amendment deemed to have been accepted under Article 23, paragraph 8 of this Protocol, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that Article;
  - (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
  - (viii) any communication called for by any Article of this Protocol;
- (b) transmit certified true copies of this Protocol to all States which have signed or ceded to this Protocol.

3. As soon as this Protocol comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## **ARTICLE 25**

### **Languages**

This Protocol is established in a single original in the Arabic, Chinese, English, French, and Russian and Spanish languages, each text being equally authentic.

Done at London this first day of November 2002.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose have signed this Protocol.

### ***Provisions Adapting or Supplementing Specified Articles of the Convention***

2. For the purposes of paragraph 2 of Article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

3. The Government of The Federal Republic of Nigeria reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, if any, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for the implementation of the Athens Convention to the lower of the following amounts:

-250,000 units of account in respect of each passenger on each distinct occasion;

Or

-340,000,000 unit of account overall per ship on each distinct occasion.

4. Furthermore, the Government of The Federal Republic of Nigeria reserves the right to and undertakes to apply the IMO Guidelines for Implementation of Athens Convention paragraphs 2.1.1 and 2.2.2 mutatis mutandis to such liabilities.

5. The liability of performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amount recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

6. The Reservation and undertaking will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

### **COMPULSORY INSURANCE AND LIMITATION OF LIABILITY OF INSURERS**

7. The Government of The Federal Republic of Nigeria undertakes to limit the requirement under paragraph 1 of Article 4 bis to maintain insurance or other financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2. 2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

-250,000 units of account in respect of each passenger on each distinct occasion;

Or

-350,000,000 units of account overall per ship on each distinct occasion.

8. The Government of Nigeria reserves the right to and undertakes to limit the liability of the insurer or to other persons providing financial security under paragraph 10 of Article 4 bis, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for the Implementation of the Athens Convention, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of this reservation.

9. The Government of the Federal Republic of Nigeria also reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraph 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

10. The Government of the Federal Republic of Nigeria reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4 bis from any liability for which he has not undertake to be liable.

## **CERTIFICATION**

11. The Government of the Federal Republic of Nigeria reserves the right to and undertakes to issue insurance certificate under paragraph 2 of Article 4 bis of the Convention so as:

-to reflect the limitation of liability and the requirement for insurance cover referred to in paragraph 1.2, 1.6, 1.7, and 1.9; and

- to include such limitations, requirement, and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.

12. The Government of the Federal Republic of Nigeria reserves the right to and undertakes to accept insurance certificates issued by other State Parties issues pursuant to a similar reservation.

13. All such limitations, requirements, and exemptions will be clearly reflected in the certificate issued or certified under paragraph 2 of Article 4 bis of the Convention.

## **RELATIONSHIP BETWEEN THIS RESERVATION AND THE IMO GUIDELINES FOR THE IMPLEMENTATION OF THE ATHENS CONVENTION**

14. The rights retained by this reservation would be exercised with due regards to the IMO Guidelines fro implementation of the Athens Conventions or to any amendments thereto with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for the Implementation of the Athens Convention, including the limits, has been approved by the legal committee of the International Maritime Organization, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.

## **GUIDELINES**

2. In the current state of the insurance market, State Parties should issue insurance certificates on the basis of one undertaking from an insurer covering war risks, and

another insurer covering non-war risks. Each insurer should only be liable for its part. The following rules should apply (the clause referred to as set out in Appendix A):

2.1 Both war and non war insurance may be subject to the following clauses:

2.1.1. *Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause (Institute Clause No. 370);*

2.1.2 *Institute Cyber Attack Exclusion Clause (Institute Clause No. 380)*

2.1.3 The defences and limitation of a provider of a compulsory financial security under the Convention as modified by this Guidelines, in particular the limit of 250,000 units of account per passenger or each distinct occasion;

2.1.4 The proviso that the insurance shall only cover liabilities subject to the Convention as modified by these Guidelines; and

2.1.5. The proviso that any amounts settled under the Convention shall serve to reduce the outstanding liability of the carrier and /or its insurer under Article 4 bis of the Convention even if they are not paid by or claimed from the respective war or non war insurers.

2.2 War insurance shall cover liability, if any, for the loss suffered as a result of death or personal injury to a passenger caused by;

-war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or any hostile act or against a belligerent power;

-capture, seizure, arrest, restraint, or detainment, and the consequences thereof or any attempt thereat;

-derelict mines, torpedoes, bombs, or other derelict weapons of war;

-act action taken to prevent or counter any such risk;

-confiscation and expropriation;

and may be subject to the following exemptions, limitations and requirements:

2.2.1 *War Automatic Termination and Exclusion Clause*

2.2.2 In the event the claims of individual passenger receive in the aggregate the sum of 340 million units of account overall per ship on any distinct occasion, the carrier shall be entitled to invoke limitation of his liability in the amount of 340 million units of account, always provided that:

-this amount should be distributed amongst claimants in proportion to their established claims;

- the distribution of this amount maybe made in one or more portions to claimants, known at the time of the distribution; and
- the distribution of this amount maybe made by the insurer, or by the Court or other competent authority seized by the insurer in any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.

2.2.3 30 days notice clause in cases not covered by 2.2.1

2.3 Non-war insurance should cover all perils subject to compulsory insurance other than those risks listed in 2.2, whether or not they are subject to exemptions, limitation or requirements in 2.1 and 2.2.

3. An example of a set of insurance undertakings (Blue Cards) and an insurance certificate all reflecting this guidelines, are included in Appendix B.

4. A State Party should not issue certificate on another basis than set out in paragraph 2 unless the matter first has been considered by the legal committee of the International Maritime Organization.

5. The Legal Committee encourages the Depository of the Convention-if necessary-to make these guidelines known to a State that is about to deposit an instrument of signature, ratification, acceptance, approval or accession.

## ANNEX

### CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number of letters	IMO Ship identification number	Port of registry	Name and full address of principal place of business of the carrier who actually performs the

				carriage

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security .....  
Duration of Security .....  
Name and address of the insurer(s) and/or guarantor(s)  
Name .....  
Address.....  
.....  
This certificate is valid until .....  
Issued or certified by the Government of .....  
(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of ..... (full designation of the State) by ..... (name of institution or organization) at ..... on .....  
(Place) (Date)

.....  
(Signature and Title of issuing or certifying official)

**Explanatory Notes to Annex:**

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect
5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or

guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

**I CERTIFY IN ACCORDANCE WITH SECTION 2(1) OF THE ACTS AUTHENTICATION ACT, CAP.4, LAWS OF THE FEDERATION OF NIGERIA 1990 THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.**

**CLERK TO THE NATIONAL ASSEMBLY**

**..... DAY OF ....., 2009**