



IMO

INTERNATIONAL MARITIME LAW INSTITUTE



**Established under the auspices of the International Maritime Organization
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**INCORPORATION OF THE ATHENS CONVENTION RELATING
TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE
BY SEA, 2002 INTO TURKISH NATIONAL LEGISLATION**

**A Legislation Drafting Project submitted in partial fulfillment of the
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PART I
EXPLANATORY NOTE

1. Introduction

There have been several maritime incidents that took into consideration the respect for carriage of passengers and their luggage by sea. The perfect example is the disaster of the “*Titanic*” which resulted in the death of 1,501 people in 1912 striking an iceberg off Newfoundland. This maritime accident received public attention on the protection of passengers and their luggage at sea. This particular incident, therefore, led to the adoption of the first Safety of Life at Sea Convention (SOLAS) in 1914.

The main objective of the SOLAS Convention is to specify the minimum standards for the construction, equipment and operation of ships, compatible with their safety. The first version of SOLAS Convention was adopted in 1914 in response to the “*Titanic*” disaster, the second in 1929, the third in 1948 and the fourth in 1960. A completely new Convention was adopted in 1974 and several amendments have been made since.¹ The amendment of SOLAS in 1995 was also brought about because of another significant accident involving the *Scandinavian Star* in 1990.²

During the late 1990s, a number of very serious accidents occurred which were manifestly caused by human error, with management faults also identified as contributing factors. After some experience, in 1993, the IMO adopted the ISM Code

¹ Fitzpatrick, D., Anderson, M.; *Seafarers` Rights*, Oxford University Press, New York, 2005, p. 48.

² Boisson, P.; *Lecture Presentation on Maritime Safety*, IMLI, 2009/2010.

which establishes safety and management objectives.³ However, the main aim is the prevention of human injury and loss of life, and the avoidance of any damages.

The first convention relating to the carriage of passengers by sea was adopted in Brussels on 29 April 1961⁴ and came into force on 4 June 1965, but never achieved general acceptance among major shipping nations, with the exception of France.⁵ The second convention which relates to the loss or damage to passenger's luggage by sea was adopted in Brussels on 27 May 1967.⁶ The Convention was ratified by only two States (Algeria and Cuba respectively). Therefore, it has never come into force. It aimed at providing a completely separated regime for liability for passengers' luggage which was to run with the 1961 Convention.

In addition, both the Brussels Conventions texts played a very important role and embodied many rules which were ultimately re-enacted in the Athens Convention 1974.⁷ Therefore, it can be said that there were significant concerns about declining standards of carriage of passengers and their luggage by sea before the Athens Convention. The Athens Convention was adopted on 13 December 1974 and came into force on 28 April 1987.⁸ For the reasons which are mentioned above, the 1974 Athens Convention⁹ is the main Convention relating to the carriage of passengers and their luggage by sea. It was designed to create a comprehensive liability regime for passenger claims.

First of all, the subject matter of the Athens Convention basically is the liability of the carrier. Secondly, the liability of the carrier is for the damage suffered as a result of the death of or personal injury to passengers and the loss of or damage to their

³ Available at: <http://www.imo.org/safety>, accessed on 08.01.2010.

⁴ See the International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea 1961.

⁵ Soyer, B.; Boundaries to the Athens Conventions: "What you see is not always what you get", in Thomas Rhidian, *Liability Regimes in Contemporary Maritime Law*, Infroma, 2007, p. 183.

⁶ See the International Convention for the Unification of Certain Rules relating to the Carriage of Passengers Luggage by Sea 1967.

⁷ The full name of the convention is the Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974.

⁸ Article 24(1) "This Convention shall enter into force on the ninetieth day following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession".

⁹ Available at: <http://www.imo.org/convention/contents>, accessed on 08.01.2010.

luggage. Finally, the incident which has caused damage must occur in the course of the voyage by seagoing vessels and must be caused by the fault or negligence of the carrier or his servants or agents acting within the scope of their employment.¹⁰

The first amendment to the 1974 Athens Convention occurred on November 19 of 1976 and came into force on April 30 of 1989. The Special Drawing Right (SDR)¹¹ was adopted as the unit of account in the Athens Convention by the 1976 Protocol. This was just to bring it in line with other maritime conventions by adopting the SDR as monetary unit. A further Protocol was adopted in London on 29 March 1990. However, the 1990 Protocol never came into force because of the inadequate acceptance by States.¹² The main objective of the 1990 Protocol was to increase the amount of the compensation available in the event of death or injury and loss or damage to the luggage.

In the attempt to improve the rights of passengers under the Athens Convention 1974, in November, 2002 a Diplomatic Conference held at the IMO headquarters in London adopted the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974. It is mentioned that the amended Convention is to be known as the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 2002. Consequently, the Convention and Protocol must be read and interpreted together as one single instrument.¹³ It should also be mentioned that if a State decides to ratify the Athens Convention 2002, they would be obliged to denounce the 1974 Convention and its 1976 Protocol if they are party to one of them.¹⁴

There are many radical changes which have been brought about by the 2002 Protocol. First of all, the compulsory insurance regime and direct action against the insurer to cover passengers' claim was introduced. The other main changes are: an increase of

¹⁰ Soyer, B.; Sundry Consideration on the Draft Protocol to the Athens Convention Relating to the Carriage of Passengers and Their Luggage at Sea 1974, JMLC, Vol.33. N. 4, October 2002, p.52.

¹¹ Available at: <http://www.imf.org/external/index.htm>, accessed on 08.01.2010.

¹² Tetley, W.; International Maritime and Admiralty Law, International Shipping Publication, Canada, 2002. p. 543.

¹³ See Article 15 of the 2002 Protocol.

¹⁴ See Article 17 of the 2002 Protocol.

the carrier's limit of liability and the reversed of the burden of proof in some circumstances.¹⁵ Therefore, it can be said that the provisions relating to strict liability, compulsory insurance regime, direct action against the insurer are the most radical changes to the existing Athens Convention 1974.

It should also be noted that the Limitation Convention of 1924, 1957 and 1976 as amended by the 1996 Protocol also provides a limitation for shipowners in respect of passenger claims.¹⁶ The carrier, the performing carrier and their servants or agents are also allowed to limit their liability under the other international Convention relating to the limitation of liability, such as the 1976 Limitation of Liability for Maritime Claims (LLMC) Convention.

In 2006 the Legal Committee of the IMO adopted Guidelines for the Implementation of the 2002 Athens Convention. The Reservation and Guidelines¹⁷ proposed the implementation of the Convention in relation to the limitation of liability for carriers and a limitation for compulsory insurance and financial security for acts of terrorism, taking into account the current state of the insurance market. This was the first time that IMO encouraged States to include a Reservation when adopting one of its Conventions.

2. An Overview of the 1974 Athens Convention

The Athens Convention applies to the international carriage of passengers and their luggage on board a ship flying the flag of a contracting State, or when a contract of

¹⁵ Available at: [http:// www.imo.org/newsroom](http://www.imo.org/newsroom), accessed on 08.01.2010.

¹⁶ Tetley, W.; International Maritime and Admiralty Law, International Shipping Publication, Canada, 2002. p. 518.

¹⁷ The Legal Committee of the International Maritime Organisation at its 92nd session in Paris in October 2006 adopted Guidelines for implementation of Athens Convention 2002.

carriage has been made in a contracting State or where the voyage begins or ends in such a State.

International carriage is defined under Article 1(9) as: *“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; as carriage where the places of departure and destination are in different States or where there is an intermediate port of call in another State”*.

The Convention imposes liability on the carrier and performing carrier. Under Article 1(1), the carrier is defined as *“a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier”* and performing carrier is defined as *“a person other than the carrier, being the owner, charter or operator of a ship, who actually performs the whole or part of the carriage”*. The term “performing carrier” is limited to the owner, charterer or operator of the ship who is actually performing the carriage. Therefore, the term carrier is defined widely and it incorporates also tour operators, ferry companies and cruise companies.¹⁸

According to Article 4 of the Convention, the performing carrier himself will be liable jointly and severally with the carrier. In other words, where both the carrier and the performing carrier are liable for the same occurrence: their liability shall be joint and several. The fact that, the joint and several liability would probably be an advantage for the passengers.

Liability of the carrier is; *“for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage”*. One thing that must be considered is that the carrier shall be liable if the incident was due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment. According to the Convention the burden of the proof is given on the

¹⁸ Griggs, P, Williams, R, Farr, J.; *Limitation of Liability for Maritime Claims*, Fourth Edition, Lloyd's of London Press Ltd, London and Singapore, 2005, p. 97.

claimant. However, the fault or neglect on the part of the carrier is presumed in case of shipwreck, collision, stranding, explosion, fire and defect of the ship.¹⁹

This Convention shall apply to any international carriage if a carrying vessel is registered in or flies the flag of a State Party, or if the contract of carriage in question is made within a State Party, or if the place of departure or destination, according to the contract of carriage, is in a State Party.²⁰ According to Article 21 of the Convention, it is not applicable only to private entities but also applicable to commercial carriage undertaken by public authorities.

In the Convention, a passenger is defined under Article 1(4) as *“any persons carried in a ship under a contract of carriage, or 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”*.

Therefore, the provisions of the Convention will not apply where the carriage does not take place under a contract of carriage (i.e. stowaways). At the same time, passenger transportation must be subject to payment otherwise the carrier will not have the benefit of the limit of liability (i.e. guests). Under these circumstances, the Convention will not be applicable. Moreover, the Convention only applies if the carriage is performed on sea-going vessels and therefore air-cushion vehicles are excluded from the Convention, as are inflatable rafts and jet skis.

The carrier is liable for injury or death sustained by passenger, as well as for loss or damage to luggage, which occur in the course of the carriage due to his fault or neglect or that of his servant or agents acting within the scope of their employment. Moreover, cabin luggage and non-cabin luggage are distinguished intentionally in the Convention. This distinction will be a key point when the carrier's responsibilities are being determined for loss or damage.

¹⁹ Grime, R.; Shipping Law, Sweet & Maxwell, Second Edition, London, 1991, p.176.

²⁰ See Article 2 of the 2002 Athens Convention.

The minimum limit of liabilities per contract of carriage under the Athens Convention 1974 as amended by the 1976 SDR Protocol is as follows:

<u>Limits of Liability</u>		
<u>Athens Convention 1974 as Amended by 1976 Protocol</u>		
Type of claim	1974 Convention (gold francs)	1976 Protocol (SDR)
For death/personal injury (per passenger/per carriage)	700,000 g.f.	46,666 SDRs
For loss/damage-cabin luggage (per passenger)	12,500 g.f.	833 SDRs
For loss/damage-vehicles/contents (per vehicle)	50,000 g.f.	3,333 SDRs
For loss/damage-other luggage (per passenger)	18,000 g.f.	1,200 SDRs

According to the Convention, these are minimum limits of liability and therefore carrier may not be entitled to decide any lower limits. On the contrary, both the carrier and the passenger can agree to higher limits.²¹

In addition, the Convention states that any actions for damages for personal injury or for loss or damage to luggage must be brought within two years period from the date disembarkation occurred or should have occurred. The period of two years may be extended by agreement of the parties.

3. An Overview of the 2002 Athens Convention

In 2002, on Friday, 1 November a Diplomatic Conference held at the IMO headquarters in London adopted the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea 1974. At the

²¹ See 1974 Athens Convention Article 7(2).

Diplomatic Conference, Turkey was represented by an observer.²² The amended Convention is to be known as the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 2002. In addition, The Convention and the Protocol must be read and interpreted together as one single instrument.

The Athens Convention 2002 makes radical changes to the existing Athens Convention 1974. Especially, Article 3 of Athens Convention which relates to liabilities of the carriers. Under the Athens Convention 1974, the carrier was liable for death of or personal injury to a passenger and for the loss of or damage to luggage if the event occurred during the carriage and was due to fault or neglect of the carrier or his servant or agent. The limit of liability has been raised significantly under the Athens Protocol 2002.²³

3.1. Loss of Life or Personal Injury

The carrier will be strictly liable up to a 250,000 SDRs per passenger on each distinct occasion for death or personal injury suffered as a result of a “shipping accident”. Unless he proves that resulted from an act of war, hostilities, civil 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.²⁴

The higher limit in Article 7 only applies where claims exceed the first limit of liability which is mentioned in Article 3 unless he proves that the incident giving rise to the loss occurred without his fault or neglect. In other word, where the loss exceeds the 250,000 SDR limit the carrier will be further liable, unless the carrier can prove that the loss occurred without his fault or neglect, up to a limit of 400,000 SDR per passenger on each distinct occasion.

²² International Maritime Organisation, Passengers and their Luggage, IMO Publication, 2003 Edition, London 200, p. 1, Available at: <http://books.google.com.mt/books>, 08.01.2010.

²³ Soyer, B.; Boundaries to the Athens Conventions: “What you see is not always what you get”, in Thomas Rhidian, Liability Regimes in Contemporary Maritime Law, Infroma, 2007, p. 185.

²⁴ See Article 3 of the 2002 Athens Convention.

It must be distinguished between shipping incident and non-shipping incident. First of all, the carrier will be strictly liable if this occurs as a result of a shipping incident. On the other hand, if the loss is caused by non-shipping incident the carrier will not be liable unless the claimant can prove the fault or neglect of the carrier.²⁵

The burden of proving that the incident which caused the loss of life or personal injury shall lie basically with the claimant. Where the death or personal injury is caused by a “shipping incident” actually there is nothing to prove. Once the claimant proves that the incident occurred in the course of the carriage, the carrier will be strictly liable up to 250,000 SDRs. On the other hand, in accordance with the Article 3(2) where the death or personal injury is not caused by a “shipping incident” the carrier is liable only if the claimant proves that the loss was caused by the fault or neglect of the carrier.

3.2. Cabin Luggage or Non-Cabin Luggage and Vehicle or Its Contents

The regime relating to luggage either cabin luggage or non-cabin luggage is to be considered differently. For the loss or damage to cabin luggage, the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect will be presumed for loss caused by a shipping incident. The limit for cabin luggage is 2,250 SDR per passenger per carriage.

For the loss of or damage to non-cabin luggage the carrier is liable unless the carrier can prove that the loss or damage occurred without his fault or neglect. The limit for non-cabin luggage is 3,375 SDR per passenger and per carriage, the limit for a vehicle or its contents are 12,700 SDR per vehicle per carriage.

3.3. Compulsory Insurance

²⁵ Tetley, W.; International Maritime and Admiralty Law, International Shipping Publication, Canada, 2002. p. 519.

The Athens Convention 2002 introduces the requirement of compulsory insurance and financial security to cover passengers claim and raises the limit of liability. It is a rather new concept in international maritime Conventions in respect of carriage of passengers. A new Article 4bis²⁶ of the Convention requires that when a vessel is registered in a State Party and licensed to carry more than twelve passengers the carrier has to maintain insurance or other financial security to cover liability in respect of the loss of life or personal injury to passengers. The limit of the compulsory insurance shall not be less than 250,000 Special Drawing Rights (SDR) per passenger on the each distinct occasion.

All ships which are flying the flag of a State Party need to carry the certificate of compulsory insurance or other financial security on the board. It is clearly considerable that this compulsory insurance figure is the same as the strict liability figure which is mentioned in the Article 3 of the Convention.

Passengers might be able to bring their claims directly against the insurer or provider of financial security. In such case, the amount set out in the Convention applies as the limit of liability of the insurer, even if the carrier or performing carrier is not entitle to limitation of liability. In addition, despite the potential liability of 400,000 SDR, compulsory insurance has been set at 250,000 SDR.²⁷

3.4. Limit of Liability

The limit of liability has been largely increased up to 400,000 SDR **“per passenger on each distinct occasion”** in the 2002 Athens Convention. However, the limit of liability for loss of or damage to luggage and vehicles was increased but the basis has not changed. It remained per passenger per carriage and not per distinct occasion.

In addition, the Athens Convention 2002 also includes an “opt-out” clause, State Parties introduce higher limit in case of carriers who are subject to the jurisdiction of

²⁶ See 2002 Athens Convention Article 4bis.

²⁷ Martinez, N.; Lecture Presentation on the 1974 and 2002 Athens Convention of 2009/2010.

their courts. In other words, a State Party can regulate by specific provision of national law the limit of liability for personal injury and death, provided that the national limit of liability, if any, is not lower than that prescribed in the Convention.²⁸

The procedure for updating the limitation amount has also been simplified. The tacit amendment procedure has been introduced by Article 23. This means that any future raises in limit can be achieved more readily. The Convention provides that at the request of at least half of the State 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. Amendments would be adopted by a two-thirds majority of the State Parties to the Convention and the amendments would enter into force 18 months after its deemed acceptance date.

It is also important to know that a State Party of the International Monetary Fund (IMF) is allowed to use the SDR as the monetary units. Therefore, Turkey can convert the said amount into Turkish Lira which is the national currency of Turkey.

3.5. Time Bar

The time bar for bringing action against carrier and performing carrier has been also changed from 2 years to maximum 5 years by the 2002 Convention.²⁹ An action under the Convention shall not be brought after the expiration of maximum 5 years. Hence, an action under Article 16 as amended is to be brought:

- Within 2 years for damages arising out of; personal injury-from the date of disembarkation; death during carriage-from the date of when the passenger should have disembarked; personal injury during carriage resulting in death after disembarkation-from the date of death (provided this period shall not exceed 3 years from the date of disembarkation); loss of or damage to luggage-from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

²⁸ Soyer, B.; Boundaries to the Athens Conventions: “What you see is not always what you get”, in Thomas Rhidian, *Liability Regimes in Contemporary Maritime Law*, Infroma, 2007, p. 186.

²⁹ See Article 16 of the 2002 Athens Protocol.

- Within 3 years from the date when the claimant knew or ought to have reasonably known of the injury. Loss or damage caused by the incident.
- Within 5 years from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

The Protocol was open for signature at IMO from 1 May 2003 to 30 April 2004. After that time it has been subject to accession. In accordance with Article 20, the Protocol will enter into force 12 months following the date on which 10 States have acceded to the Protocol. However, the Protocol will enter into force three months later the date on which a State has deposited the appropriate instruments at IMO.

4. The 2006 Reservation and Guidelines

It has been discovered that carriage of passengers and their luggage involves some war and terrorism risk. Therefore, the Legal Committee, at its ninety-second session in October 2006 adopted guidelines for the implementation of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The IMO Reservation and Guidelines propose the implementation of the Convention in relation to the limitation of liability for carriers and a limitation for compulsory insurance and financial security for acts of terrorism, taking into account the current state of the insurance market. The aim is to put States in a position to ratify the 2002 Protocol and thereby afford passengers better cover. The guidelines also provide wording for the recommended reservation.³⁰

While the Athens Convention 1974 had a maximum liability per passenger per carriage of SDR 46,666, the maximum limit under the 2002 Convention is SDR 400,000 per distinct occasion. However, the Reservation provides for a further limit of 250,000 SDR per passenger for each distinct or 340,000,000 SDR per ship

³⁰ According to the IMO Circular on Guidelines and Reservation, Ref. A1/P/5.01, Circular letter No.2758, 20 November 2006.

whichever is lower. Note should be taken that this figure is in respect of death or personal injury claims for war and terrorism risk.³¹

One advantage of the Guidelines is that they can be amended. This means that if the insurance market improves, the Athens Convention will not necessarily have to be amended. Such flexibility is new in liability convention.³² It is not altogether clear exactly how the amendment procedure will work.

The Guidelines have two main sections. Section one contains the text of the recommended reservation and Section two contains more detailed information on the implementation of the reservation, including technical details regarding insurance causes and exemption.

5. Current Situation of Passenger Transportation in Turkey

Turkey is located in one of the most important waterways for the world maritime trade and passenger transportation by sea. Moreover, Turkey is surrounded by sea from three sides. In addition to the above mentioned geographic facts, Turkish straits connect the Black Sea to Aegean Sea and to the Mediterranean Sea as well. Turkey is also one of the largest and most important shipping and logistics States in the world. According to the Maritime Strategy Paper 2009-2013,³³ one of the main aims is the promotion of the cruise transportation, promotion of the yacht tourism and increase the number of marinas in Turkey.

Under the Turkish Commercial Code, passenger transportation by sea has been arranged only in fourteen articles. These articles regulate domestic voyage for carriage of passenger and their luggage by sea. Despite the lack of the definition of the agreement relating passenger transportation by sea, rights and liability of passengers, luggage, repair of vessel during voyage, dismissal of agreement etc. are

³¹ Rosaeg, E.; Passenger Liabilities and Insurance Terrorism and War Risks, in Thomas Rhidian, Liability Regimes in Contemporary Maritime Law, Infroma, 2007, p. 207.

³² Rosaeg, E.; Passenger Liabilities and Insurance Terrorism and War Risks, in Thomas Rhidian, Liability Regimes in Contemporary Maritime Law, Infroma, 2007, p.213.

³³ Available at: <http://www.denizcilik.gov.tr>, accessed on 08.01.2010.

the topic to be covered under certain subtitles in these articles, and the frequent references to the carriage of goods by sea are sharply noticeable.

Actually the carrier's liability is the main issue to be thoroughly discussed in detail. In international Law, the subject is stated in the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, and its Protocol of 1976, 1990 and 2002. Turkey has not ratified any of the mentioned Conventions and protocols.

However, Turkey is one of the active members of the International Maritime Organisation by adopting its laws and regulations on maritime issues since 1999. Yet, recently, because of the immense increase in international relations, in the agreements of passenger transportation, these articles are inevitably stated or referred.

Furthermore, in the draft Commercial Code, certain articles are transferred or adopted. States which ratify the 2002 Athens Protocol are required to denounce the 1974 Convention and its 1976 and 1990 Protocols, if they are a Party to the 1974 Convention and those Protocols. Turkey has not ratified The Athens Convention 1974 and therefore The Athens Convention 2002 can be directly adopted into the domestic law. Otherwise, the regime of liability of carrier will be still governed by Turkish Commercial Law until Turkey adopts the 2002 Athens Protocol.

6. Turkish Constitutional Procedure for Ratification of the Athens Convention 2002 Incorporation into the Domestic Law

There is no specific provision in the Turkish Constitution in respect of the persons having the authority to negotiate and sign an international treaty. However, in practice the President of Republic, the Prime Minister, the Minister of Foreign Affairs, and persons authorized by the Council of Ministers are assumed competent to conclude an international treaty. An international treaty will be subject to ratification after it is signed by a competent authority.

According to Turkish Constitution, Article 90/1, the Turkish Grand National Assembly enacts a statute for approving the ratification of the treaty.³⁴ The statute concerning the approval of ratification has to be published in the Turkish Official Gazette.

Furthermore, Article 104/b-6 of Turkish Constitution provides that the President has the power to ratify and promulgate international treaties. The President ratifies the treaty through a decree which is also signed by the Council of Ministers and Prime Minister.³⁵

The adopting of the provisions of the international treaty into domestic law is realized through enacting a regulation. In Turkish Maritime Legislation, after their ratification, most of the international treaties and resolutions are adopted into Turkish domestic law as an Act. To comply with Turkish legislation practice on maritime issues, an Act will be drafted to set a detailed and effective implementation and enforcement of the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea 2002.

7. The purpose of the Bill

The draft law is proposed to incorporate the provisions of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by the protocol 2002 into the legislation of the Republic of Turkey. The Athens Convention is basically relating to the Carriage of Passengers and their Luggage by Sea (PAL), which establishes a regime of liability for damage suffered by passengers carried on seagoing vessels. For the purpose of this legislation, it will apply to seagoing vessels, excluding air-cushion vessels. This draft law also incorporates the IMO Reservation and Guidelines 2006 as part of the Schedule to the proposed Bill.

³⁴ Turkish Constitution Article 90 (1), Date: 9.11.1982

³⁵ Gözler, K.; "Türk Anayasa Hukuku Dersleri (Lectures on Turkish Constitutional Law)", Ekin Kitabevi, 2004, p. 247.



REPUBLIC OF TURKEY

CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY
SEA ACT, 2010

RESERVATION

**RESERVATION IN CONNECTION WITH THE RATIFICATION BY THE GOVERNMENT OF TURKEY
OF THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR
LUGGAGE BY SEA, 2002**

[1.1] *Reservation in connection with the ratification by the Government of Turkey of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (“the Convention”)*

Limitation of liability of carriers, etc.

[1.2] The Government of Turkey 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 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 million units of account overall per ship on each distinct occasion.

[1.3] Furthermore, the Government of Turkey reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.

[1.4] The liability of the 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 amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

[1.5] The reservation and undertaking in paragraph 1.2 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

[1.6] The Government of Turkey reserves the right to and 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

- 340 million units of account overall per ship on each distinct occasion.

[1.7] The Government of Turkey reserves the right to and undertakes to limit the liability of the insurer or other person 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 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.

[1.8] The Government of Turkey 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 paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

[1.9] The Government of Turkey 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 undertaken to be liable.

Certification

[1.10] The Government of Turkey reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4*bis* of the Convention so as:

- to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9; and

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

[1.11] The Government of Turkey reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

[1.12] 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 Implementation of the Athens Convention

[1.13] The rights retained by this reservation will be exercised with due regard to the IMO Guidelines for Implementation of the Athens Convention, or to any amendments thereto, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for 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.

PART II

DRAFT LEGISLATION

SECTION 1

CARRIAGE OF PASSENGER AND THEIR LUGGAGE BY SEA ACT

No:

Date of Approval: Day/Month/Year

An Act to implement the 2002 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and the 2006 International Maritime Organisation Reservation and Guidelines for the implementation of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

ENACTED by the Parliament of Turkey, as follows:

Article 1

Short Title

(1) The short title of this Act is the Carriage of Passengers and their Luggage by Sea Act, 2010

Article 2

Definitions

(1) In this Act, unless the context otherwise requires:

(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) "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;

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

(d) "passenger" means any person carried in a ship,

(i) under a contract of carriage, or

(ii) 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 Act;

(e) "luggage" means any article or vehicle carried by the carrier under a contract of carriage, excluding:

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

(ii) live animals;

(f) "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 (g) of this sub-Article and Article 12, cabin luggage includes luggage which the passenger has in or on his vehicle;

(g) "carriage" covers the following periods:

(i) 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;

(ii) 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;

(iii) 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;

(h) "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;

(i) "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;

(j) "ship" means only a seagoing vessel, excluding an air-cushion vehicle;

(k) "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;

(l) "Convention" means the 2002 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

(m) "State Party" means a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

(n) "Guidelines" means the 2006 IMO Guidelines for the Implementation of the Athens Convention.

(o) "Organization" means the International Maritime Organization.

(p) "Secretary-General" means the Secretary-General of the Organization.

(r) "Minister" means Minister of Transport.

Article 3

Schedules

(1) The Schedules to the Act shall constitute an integral part of this Act.

Article 5

Scope of Application

(1) This Act shall apply to any international carriage if:

(a) the ship is flying the flag of Turkey;

(b) the contract of carriage has been made in Turkey;

(c) the place of departure or destination, according to the contract of carriage, is in a Turkey.

(2) Notwithstanding the above sub-Article (1), this Act 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 5

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 Act shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 9 of this Act. Nothing in this Article shall prejudice any right of limitation under Articles 10 or 11 of this Act.

(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 6

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 Act. In addition, the performing carrier shall be subject and entitled to the provisions of this Act 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 Act or any waiver of rights conferred by this Act 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 7

Compulsory Insurance

(1) When passengers are carried on board a ship registered in Turkey that is licensed to carry more than twelve passengers, and this Act 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 Act in respect of the death of and personal injury to passengers.

(a) 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.

(b) The requirement to maintain the limit of compulsory insurance or other financial security for the death or personal injury to a passenger caused by any of risk referred to in paragraph 2 of the Guidelines, is limited to the lower of the following amounts:

(i) 250,000 units of account in respect of each passenger on each distinct occasion; or

(ii) 340 million units of account overall per ship on each distinct occasion.

(2) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act shall be issued to each ship after the National Ports Authority has determined that the requirements of sub-Article (1) have been complied with. With respect to a ship registered in Turkey, such certificate shall be issued or certified by the Undersecretariat of Maritime Affairs; with respect to a ship not registered in Turkey it may be issued or certified by the Undersecretariat of Maritime Affairs. This certificate shall be in the form of the model set out in the Appendix B of the first Schedule to the Act 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) The certificate shall be Turkish. If the language used is not Turkish, the text shall include a translation into English.

(4) 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 Turkey, with the Undersecretariat of Maritime Affairs of Turkey issuing or certifying the certificate.

(5) An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in sub-Article (4), 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.

(6) The Undersecretariat of Maritime Affairs shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

(7) Nothing in this Act shall be construed as preventing Turkey 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 Act. In such cases, Turkey, relying on such information, is not relieved of its responsibility as a State issuing the certificate.

(8) Certificates issued or certified under the authority of an other State Party shall be accepted by Turkey for the purposes of this Act and shall be regarded by Turkey as having the same force as certificates issued or certified by Turkey, even if issued or certified in respect of a ship not registered in Turkey. Turkey 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 Act.

(9) 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 sub-Article (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 sub-Article (1) would have been entitled to invoke in accordance with this Act. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful 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.

(10) Any sums provided by insurance or by other financial security maintained in accordance with sub-Article (1) shall be available exclusively for the satisfaction of claims under this Act, and any payments made of such sums shall discharge any liability arising under this Act to the extent of the amounts paid.

(11) No ship flying the flag of the Turkey to which this Article applies shall be permitted to operate at any time unless a certificate has been issued under sub-Article (2) or (12).

(12) Subject to the provisions of this Article, any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in Turkey shall have valid insurance certificate of financial security.

(13) If insurance or other financial security is not maintained in respect of a ship owned by a Government of Turkey, 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 Turkey 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 sub-Article (1). Such a certificate shall follow as closely as possible the model prescribed by sub-Article (2).

(14) The clauses referred to in paragraph 2.1 and 2.2 of Guidelines for Implementation of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 shall apply in all compulsory insurance under this Act.

Article 8

Valuables

(1) 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 sub-Article (3) of Article 11 unless a higher limit is agreed upon in accordance with sub-Article (1) of Article 13.

Article 9

Contributory Fault

(1) 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 Commercial Court of First Instance 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 10

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 5 shall in no case exceed 400,000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the Commercial Court of First Instance 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) Where the incident is related to a risk referred in paragraph 2 of Rule 1 of the Guidelines, the liability of the carrier in respect of death or personal injury to a passenger shall be limited to 250,000 units of account per passenger on each distinct occasion or 340 Million units of account per ship whichever is lesser.

Article 11

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 sub-Article (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 12

Unit of Account and Conversion

(1) The Unit of Account mentioned in this Act is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-Article (1) of Article 5, sub-Article (1) of the Article 7, sub-Article (1) of the Article 10, sub-Article (I) of the Article 12 shall be converted into Turkish Lira (TL) by the Commercial Court of First Instance 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 Turkish Lira (TL), in terms of the Special Drawing Right, 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.

Article 13

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 10 and 11.

(2) Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 10 and 11.

Article 14

Defences and Limits for Carriers' Servants

(1) 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 Act, 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 Act.

Article 15

Aggregation of Claims

(1) Where the limits of liability prescribed in Articles 10 and 11 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 Act, 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 14 of this Act to avail himself of the limits of liability prescribed in Articles 10 and 11, 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 16

Loss of Right to Limit Liability

(1) The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 10 and 11 and sub-Article (1) of Article 13, 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 17

Basis for Claims

(1) 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 Act.

Article 18

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 20

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 Commercial Court of First Instance seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Act 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 sub-Article (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 20

Competent Jurisdiction

(1) An action arising under Articles 5 and 6 of this Act shall, at the option of the claimant, be brought before the Commercial Court of First Instance, where:

(a) the place of permanent residence or principal place of business of the defendant is in Turkey, or

(b) the place of departure or that of the destination according to the contract of carriage is Turkey, or

(c) the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in Turkey, or

(d) the place where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in Turkey.

(2) Actions under Article 7 of this Act 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 sub-Article (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 21

Recognition and Enforcement

(1) Any judgment given by a court with jurisdiction in accordance with Article 20 which is enforceable in Turkey or in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in Turkey, 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 sub-Article (1) shall be enforceable in Turkey as soon as the formalities required in Turkey have been complied with. The formalities shall not permit the merits of the case to be re-opened.

(3) Turkey may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under sub-Articles (1) and (2).

Article 22

Invalidity of Contractual Provisions

(1) 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 Act of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Act except as provided in sub-Article (4) of Article 11, 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 sub-Article (1) or (2) of Article 20, 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 Act.

Article 23

Other Conventions on Limitation of Liability

(1) This Act shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in the Limitation of Liability for Maritime Claims Regulations.

Article 24

Nuclear Damage

(1) No liability shall arise under this Act 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 25

Commercial Carriage by Public Authorities

(1) This Act shall apply to commercial carriage undertaken by Turkey or Public Authorities under contract of carriage within the meaning of this Act.

Article 26

Power to Make Regulations

(1) The Minister may make regulations prescribing anything which is necessary or expedient for the purpose of ratifying or implementing the obligations of Turkey under the 2002 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and the 2006 International Maritime Organisation Reservation and Guidelines for the Implementation of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, and generally for the carrying out the purpose and provisions of the Act.

Article 27

Entry into force

(1) This Act shall enter into on its publication date.

GUIDELINES

**GUIDELINES FOR THE IMPLEMENTATION OF THE ATHENS CONVENTION RELATING TO THE
CARRIAGE OF PASSENGER AND THEIR LUGGAGE BY SEA, 2002**

1. In the current state of the insurance market, Turkey 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 clauses referred to are set out in Appendix A):

1.1 ***Both war and non-war insurance*** may be subject to the following clauses:

1.1.1 *Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause (Institute clause no. 370);*

1.1.2 *Institute Cyber Attack Exclusion Clause (Institute clause no. 380);*

1.1.3 The defences and limitations of a provider of compulsory financial security under the Convention as modified by these guidelines, in particular the limit of 250,000 units of account per passenger on each distinct occasion;

1.1.4 The proviso that the insurance shall only cover liabilities subject to the Act as modified by these guidelines; and

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

1.2 **War insurance** shall cover liability 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 there from, or any hostile act by or against a belligerent power;

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

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

- act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk;

- confiscation and expropriation;

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

1.2.1 War Automatic Termination and Exclusion.

1.2.2 In the event the claims of individual passengers exceed 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 may be made in one or more portions to claimants known at the time of the distribution; and

- the distribution of this amount may be made by the insurer, or by the Court or other competent authority seized by the insurer in Turkey or any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.

1.2.3. 30 days notice clause in cases not covered by 2.2.1

1. 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, limitations or requirements in 2.1 and 2.2.

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

3. A State Party should not issue certificates 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.

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

APPENDIX A

Insurance Clauses referred to in guidelines 2.1.1, 2.1.2 and 2.2.1 of the

First Schedule

**Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic
Exclusion Clause (Cl. 370, 10/11/2003)**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith:

1. In no case shall this insurance cover loss, damage liability, or expense directly or indirectly caused by or contributed to by or arising from:
 - 1.1 ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
 - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
 - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

Institute Cyber Attack Exclusion Clause (Cl. 380, 10/11/03)

1. Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as

a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

2. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

War Automatic Termination and Exclusion

1.1 Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY:

- 1.1.1 upon the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

- 1.1.2 in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use.

1.2 Five Powers War

This insurance excludes:

1.2.1 loss damage liability or expense arising from:

the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the

People.s Republic of China; and

1.2.2 requisition either for title or use.

APPENDIX B

I. Examples of insurance undertakings (Blue Cards) referred to in guideline

Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Name of Ship :

IMO Ship Identification Number :

Port of registry :

Name and Address of owner :

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, **subject to all exceptions and limitations allowed for compulsory war insurance under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Act and the guidelines with appendices can be inserted to the extent desirable].**

Period of insurance from: Day/Month/Year to Day/Month/Year

Provided always that the insurer may cancel this certificate by giving 30 days written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date: **Name of insurer or provider of**

This certificate has been issued by: **financial security**

[Address]

..... As agent for **Name of insurer or**

Signature of insurer **provider of financial security**

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship:

IMO Ship Identification Number:

Port of registry:

Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, **subject to all exceptions and limitations allowed for non-war insurers under the Act and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Act and the Guidelines with appendices can be inserted to the extent desirable].**

Period of insurance from: Day/Month/Year to Day/Month/Year

Provided always that the insurer may cancel this certificate by giving three months written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

Name of insurer or provider of

[Address]

financial security

.....

As agent for **Name of insurer or**

Signature of insurer

provider of financial security

II. Model of certificate of insurance referred to in guidelines

**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 or letters Number	IMO Ship Identification	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage
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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)

The insurance cover hereby certified is split in one war insurance part and one non-war insurance part, pursuant to the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006. Each of these parts of the insurance cover is subject to all exceptions and limitations allowed under the Convention and the implementation guidelines. The insurers are not jointly and severally liable. The insurers are:

For war risks : Name of insurer or provider of financial security, [address]

For non-war risks: Name of insurer or provider of financial security, [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:

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.