

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL)

Adoption: 13 December 1974; Entry into force: 28 April 1987; 2002 Protocol: Adoption: 1 November 2002; **Entry into force: 23 April 2014**

The Convention was adopted at a Conference, convened in Athens in 1974 and was designed to consolidate and harmonize two earlier Brussels conventions dealing with passengers and luggage and adopted in 1961 and 1967 respectively.

The Convention establishes a regime of liability for damage suffered by passengers carried on a seagoing vessel. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier.

However, unless the carrier acted with intent to cause such damage, or recklessly and with knowledge that such damage would probably result, he can limit his liability. For the death of, or personal injury to, a passenger, this limit of liability is set at 46,666 Special Drawing Rights (SDR) per carriage. The 2002 Protocol, when it enters into force, will introduce compulsory insurance to cover passengers on ships and substantially raise those limits to 250,000 SDR per passenger on each distinct occasion. .

As far as loss of or damage to luggage is concerned, the carrier's limit of liability varies, depending on whether the loss or damage occurred in respect of cabin luggage, of a vehicle and/or luggage carried in or on it, or in respect of other luggage.

The 1976 Protocol made the unit of account the Special Drawing Right (SDR), replacing the "Poincaré franc", based on the "official" value of gold, as the applicable unit of account.

The 1990 Protocol was intended to raise the limits set out in the convention but it did not enter into force and was superseded by the 2002 Protocol.

The 2002 Protocol

Adoption: 1 November 2002

Entry into force: 12 months after being accepted by 10 States

The Protocol introduces compulsory insurance to cover passengers on ships and raises the limits of liability. It also introduces other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims.

The limits contained in the Protocol set a maximum limit, empowering - but not obliging - national courts to compensate for death, injury or damage up to these limits.

The Protocol also includes an "opt-out" clause, enabling State Parties to retain or introduce higher limits of liability (or unlimited liability) in the case of carriers who are subject to the jurisdiction of their courts.

Compulsory insurance

A new Article 4bis of the Convention requires carriers to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the limits for strict liability under the 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 Special Drawing Rights (SDR) per passenger on each distinct occasion. Ships are to be issued with a certificate

attesting that insurance or other financial security is in force and a model certificate is attached to the Protocol in an Annex.

Limits of liability

The limits of liability have been raised significantly under the Protocol, to reflect present day conditions and the mechanism for raising limits in the future has been made easier.

The liability of the carrier for the death of or personal injury to a passenger is limited to 250,000 SDR per passenger on each distinct occasion.

The carrier is liable, unless the carrier proves that the incident 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.

If the loss exceeds the limit, the carrier is further liable - up to a limit of 400,000 SDR per passenger on each distinct occasion - unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

Death of or personal injury to a passenger

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 is 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 lies with the claimant.

The liability of the carrier only includes 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, lies with the claimant.

"Opt-out" Clause

The Protocol allows a State Party to regulate by specific provisions 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 Protocol. A State Party, which makes use of this option is obliged to inform the IMO Secretary-General of the limit of liability adopted or of the fact that there is none.

Loss of or damage to luggage and vehicles

- The liability of the carrier for the loss of or damage to cabin luggage is limited to 2,250 SDR per passenger, per carriage.
- liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle is limited to 12,700 SDR per vehicle, per carriage.
- liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR per passenger, per carriage.

The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDR in the case of damage to a vehicle and not exceeding 149 SDR per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

Amendment of limits

The 2002 Protocol introduces a new procedure for amending the limits of liability under the Convention, so that any future raises in limits can be achieved more readily. Under the 1974 Convention, limits can only be raised by adopting amendments to the Convention which require a specified number of States' acceptances to bring the amendments into force. This has meant, for example, that the 1990 Protocol, which was intended to raise the limits, has not yet entered into force and indeed is being superseded by the 2002 Protocol.

The 2002 Protocol therefore introduces a tacit acceptance procedure for raising the limits of liability. A proposal to amend the limits, as requested by at least one-half of the Parties to the Protocol, would be circulated to all IMO Member States and all States Parties and would then be discussed in the IMO Legal Committee. Amendments would be adopted by a two-thirds majority of the States Parties to the Convention as amended by the Protocol present and voting in the Legal Committee, and amendments would enter into force 18 months after its deemed acceptance date. The deemed acceptance date would be 18 months after adoption, 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 IMO Secretary-General that they do not accept the amendment.

Regional Economic Integration Organizations

For the first time in an IMO Convention, a regional economic integration organization may sign up to the Protocol. An article in the Protocol states that 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 the 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.

Title of Convention

The Protocol states that Articles 1 to 22 of the Convention, as revised by the Protocol, together with Articles 17 to 25 of the Protocol and the Annex thereto, shall constitute and be called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

States who ratify the 2002 Protocol are required to denounce the 1974 Convention and its 1976 and 1990 Protocols, if they are Party to the 1974 Convention and those Protocols.

2006 "reservation"

The Legal Committee at its 92nd session in October 2006 adopted the text of a reservation, intended for use as a standard reservation, to the 2002 Protocol and adopted *Guidelines for the implementation of the Athens Convention, to allow limitation of liability in respect of claims relating to war or terrorism*.

The aim is to put States in a position to ratify the 2002 Protocol and thereby afford passengers better cover.

The text of the agreed reservation states that the Government concerned reserves the right to and undertakes to limit liability to 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. This relates in particular to war insurance which, under the guidelines, shall cover liability, if any, for 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 by or against a belligerent power;
- capture, seizure, arrest, restraint or detention, 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.

Special Drawing Rights

The daily conversion rates for Special Drawing Rights (SDRs) can be found on the International Monetary Fund website at www.imf.org