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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.06.2003
COM(2003) 375 final

2003/0132 (AVC)

Proposal for a

COUNCIL DECISION

concerning the conclusion by the European Community of the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The revision of the the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 was aimed at addressing certain significant shortcomings in the regulation of the liability of carriers of passengers by sea at international level. This work culminated with the adoption of the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, on 1 November 2002 (the 'Athens Protocol').

The Athens Protocol is of significance to the Community in two different ways. Firstly, parts of the Protocol belong to the exclusive competence of the Community and therefore necessitates the Community becoming a Contracting Party to it before Member States can do so. Secondly, the substance of the Protocol, the adequate compensation of passengers on board ships, is a key objective of the Community's maritime safety policy.

2. EXCLUSIVE COMMUNITY COMPETENCE

Articles 10 and 11 of the Athens Protocol provide for rules on the jurisdiction and the recognition and enforcement of judgments given in accordance with the Protocol. For these matters the Community has, through the adoption of Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters on 22 December 2000,[1] acquired exclusive competence. The Regulation is binding upon all EU Member States, with the exception of Denmark.[2] Articles 10 and 11 of the Athens Protocol, replacing or amending Articles 17 and 17bis of the Athens Convention, affect the provisions of Regulation 44/2001. Consequently, Member States cannot, outside the framework of the Community institutions, assume obligations with third countries relating to those articles.

On 8 October 2001, the Commission was mandated by the Council to negotiate certain parts of the Athens Protocol on behalf of the Community. The mandate specifically focused on the need for the new Protocol to include a possibility for the Community to become a Contracting Party to it. Secondly, the Council expressed its wish to remove a proposed paragraph granting jurisdiction to the court of the State of the claimant's own domicile or permanent residence on the basis of the defendant providing services to or from that State and being subject to jurisdiction in that States (the so-called 'fifth' jurisdiction), which was deemed to be inconsistent with the regime laid down in Regulation 44/2001. Thirdly, the Commission was mandated to negotiate that there should be a possibility for a continued application of the Community rules on recognition and enforcement of judgments as between EU Member States.

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1 OJ, L 12, 16.1.2001, p. 1.

2 In accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark did not take part in the adoption of Council Regulation 44/2001 and is not bound by it nor subject to its application. The 1968 Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, as amended, remains in force in the relations between Denmark and the other EU Member States. For a consolidated text of this Convention, see OJ C 27, 26.11.1998, p.1.

These negotiations took place in a number of meetings the of the IMO Legal Committee and more informal information meetings organised by the Commission and at the Diplomatic Conference itself. The final Protocol includes in Article 19 a possibility for Regional Economic Integration Organizations to become Contracting Parties, which is the first time this has been done in an IMO instrument. In addition, the Protocol does not contain the 'fifth' jurisdiction while it does allow the possibility for Parties to the Protocol to apply, as between themselves, other rules for the recognition and enforcement of judgments, provided that their effect is that judgments are recognised and enforced at least to the same extent as under the rules of the Protocol (Article 11.3). The Commission thus succesfully carried out the negotiations mandated to it by the Council.

The Athens Protocol regulates matters of key importance to the Community. It is a 'mixed' agreement, which partly contain elements which belong to the exclusive competence of the Community and partly elements falling within the competence of Member States. In such situations there is an inter-dependency between the conclusion of the agreement by the Community and its Member States. In particular, Member States cannot conclude the agreement until the Community has done so. For this reason, and given the obvious significance of not delaying the regulation of proper protection of passengers by sea, an early conclusion of the Protocol by the Community is considered to be of highest priority.

3. LIABILITY OF CARRIERS CARRYING PASSENGERS BY SEA

Adequate protection of passengers on board ships is of key concern to the Commission. At present, the liability for carriers of passengers by sea is not subject to fully harmonised rules, neither at international nor European level. There is no Community legislation in this field and the protection of passengers varies between Member States, depending on what international conventions, and which amendments to them, have been ratified by the State in which the claim is settled. Consequently, maximum compensation amounts for death or personal injury to a passenger show great variations within EU Member States. In addition, none of the applicable conventions or protocols stipulates a strict liability for the carrier or an obligation for carriers to take out insurance to meet claims from passengers.

For these reasons, the Commission, in its Communication on the enhanced safety of passenger ships in the Community (COM(2002)158 final of 25.3.2002), outlined its views on certain key elements which should form part of a workable maritime passenger liability regime and added that such a regime needs to be put in place within the EU within a near future. That Communication coincided with the revision on the international rules on the liability for carriers of passengers by sea at international level. The Communication outlined a number of substantive issues (including the nature and extent of the carrier's liability and minimum requirements on insurance) which, in the view of the Commission, were unsufficiently regulated in the previous version of the Athens Convention.

It was considered that if the new international regime satisfies – or at least does not prevent the application of – all the key elements outlined by the Commission, it would preferable to implement the EU-regime within the context of the international passenger liability regime. The the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, which was adopted on 1 November 2002 satisfies all requirements set by the Commission.

It is therefore proposed that the Community becomes a Contracting Party to the Athens Protocol the earliest possible moment and that the Member States shall do likewise before the

end of 2005. This would represent a significant step forward for in the Community's maritime safety policy on passengers.

4. THE WAY AHEAD

In order to achieve a uniform and adequate passenger liability regime in the Community, the conclusion by the Community of the Athens Protocol needs to be complemented in the near future by a Regulation incorporating the provisions of the Athens Protocol into Community law. This would make the provisions of the Protocol fully enforceable under Community law and would also correspond to the arrangements in the aviation sector, where the Community, through Regulation 2027/97/EC on air carrier liability in case of accidents, has already established a comprehensive EU-wide passenger liability regime for air carriers.

As a second step, therefore, and no later than in 2004, the Commission will propose a regulation implementing the Athens Protocol's provisions relating to the liability for death and personal injury of passengers. Such a regulation will ensure a harmonised application and enforcement of liability rules relating to death and personal injury of passengers by sea in the Community.

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concerning the conclusion by the European Community of the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 65 thereof in conjunction with Article 300(2), first sentence of the first subparagraph and Article 300(3), second subparagraph,

Having regard to the proposal from the Commission[3],

Having regard to the assent of the European Parliament[4],

Whereas:

(1) The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, (the 'Athens Protocol') represents a major improvement for the regime relating to the liability of carriers and the compensation of passengers carried by sea. In particular, it provides for a strict liability for the carrier and includes compulsory insurance with a right of direct action against insurers up to specified limits. The Protocol is therefore in accordance with the Community's objective to improve legal regime relating to carriers' liability;

(2) The Athens Protocol modifies the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument;

(3) Articles 10 and 11 of the Protocol regulate matters which affect Community rules as laid down in Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.[5] Member States are therefore prevented from assuming obligations with third countries relating to those matters, outside the Community institutions;

(4) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of this Decision.

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3 OJ C […] of […], p.[…]

4 OJ C […] of […], p.[…].

5 OJ L 12 of 16.1.2001, p. 1. The Regulation is binding upon all EU Member States, with the exception of Denmark.

(5) The Protocol is open for signature by the Contracting Parties as from 1 May 2003 until 30 April 2004;

(6) The Athens Protocol is open to signature, ratification, acceptance, approval or accession by States and by Regional Economic Integration Organizations, which are constituted by sovereign States that have transferred competence over certain matters governed by the Protocol to those Organization;

(7) According to Article 17(2)(a) of the Protocol, States may express their consent to be bound by the Protocol by signature without reservation as to ratification, acceptance or approval. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the International Maritime Organization;

(8) Under the terms of Article 19 of the Athens Protocol, a Regional Economic Integration Organization must declare in its instrument of ratification, acceptance, approval or accession, the extent of its competence in respect of the matters governed by the Protocol.

(9) The Community, in consequence, can approve the Athens Protocol.

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, (the 'Athens Protocol') is hereby approved on behalf of the Community.

The text of the Protocol is reproduced in Annex 1 to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person or persons empowered to sign the Protocol without reservation as to ratification, acceptance or approval, in accordance with Articles 17(2)(a) and 19 of the Protocol.

At the time of signature, the Community shall make the declaration of competence set out in Annex 2 to this Decision, according to the provisions of Article 19 of the Protocol.

Article 3

Member States shall take the necessary measures to become Contracting Parties to the Athens Protocol as soon as possible, and shall in any case have completed this procedure by 31 December 2005.

Done at

For the Council
The President

ANNEX 1
PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

The States Parties to this Protocol,

CONSIDERING that it is desirable to revise the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974, to provide for enhanced compensation, to introduce strict liability, to establish a simplified procedure for updating the limitation amounts, and to ensure compulsory insurance for the benefit of passengers,

RECALLING that the 1976 Protocol to the Convention introduces the Special Drawing Right as the Unit of Account in place of the gold franc,

HAVING NOTED that the 1990 Protocol to the Convention, which provides for enhanced compensation and a simplified procedure for updating the limitation amounts, has not entered into force,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

1 "Convention" means the text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

2 "Organization" means the International Maritime Organization.

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

ARTICLE 2

Article 1, paragraph 1 of the Convention is replaced by the following text:

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(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 owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage; and

(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.

ARTICLE 3

1 Article 1, paragraph 10 of the Convention is replaced by the following:

10 .Organization. means the International Maritime Organization.

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

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

ARTICLE 4

Article 3 of the Convention is replaced by the following text:

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 Articles 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 5

The following text is added as Article 4bis of the Convention:

Article 4bis
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 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.

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 6

Article 7 of the Convention is replaced by the following text:

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 7

Article 8 of the Convention is replaced by the following text:

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 8

Article 9 of the Convention is replaced by the following text:

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 l, 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 9

Article 16, paragraph 3, of the Convention is replaced by the following text:

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.

ARTICLE 10

Article 17 of the Convention is replaced by the following text:

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 11

The following text is added as Article 17bis of the Convention:

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 the 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 recognised and enforced at least to the same extent as under paragraphs 1 and 2.

ARTICLE 12

Article 18 of the Convention is replaced by the following text:

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 13

Article 20 of the Convention is replaced by the following text:

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 14
Model certificate

1 The model certificate set out in the annex to this Protocol shall be incorporated as an annex to the Convention.

2 The following text is added as Article 1bis of the Convention:

Article 1bis
Annex

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

ARTICLE 15
Interpretation and application

1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2 The Convention as revised by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.

3 Articles 1 to 22 of the Convention, as revised by this Protocol, together with Articles 17 to 25 of this 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.

ARTICLE 16

The following text is added as Article 22bis of the Convention.

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

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 8 and 9 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 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.

ARTICLE 25
Languages

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

DONE AT LONDON this first day of November two thousand and two.

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

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 or letters ……

IMO Ship Identification Number …….

Port of Registry ……

Name and full address of the 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 organisation)

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.

ANNEX 2

DECLARATION BY THE EUROPEAN COMMUNITY IN ACCORDANCE WITH ARTICLE 19 OF THE PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

"The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Articles 65 and 300 thereof, it is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

-- the recognition and enforcement of judgments;

-- the competent jurisdiction;

Moreover, the European Community declares that it has already adopted legal instruments, binding on its Member States, covering matters governed by this Convention. The Community will submit and update as appropriate a list of those legal instruments to the Secretary-General of the International Maritime Organization in accordance with Article 19 of the Protocol. At present, the only such instrument is Regulation (EC) No. 44/2001 on *Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters,*[6] *which is binding upon all EU Member States with the exception of Denmark.*

The European Community is responsible for the performance of those obligations resulting from the Convention which are covered by Community law in force".

6 Official Journal of the European Communities, L 12, 16.1.2001, p. 1.