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Regulation (EC) No 392/2009 of the European Parliament and of the Council

of 23 April 2009

on the liability of carriers of passengers by sea in the event of accidents

(Text with EEA relevance)

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Regulation (EC) No 392/2009 of the European Parliament and of the Council

of 23 April 2009

on the liability of carriers of passengers by sea in the event of accidents

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

(1) Within the framework of the common transport policy, further measures need to be adopted in order to enhance safety in maritime transport. Those measures should include liability rules for damage caused to passengers, since it is important to ensure a proper level of compensation for passengers involved in maritime accidents.

(2) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted on 1 November 2002 under the auspices of the International Maritime Organisation (IMO). The Community and its Member States are in the process of deciding whether to accede to or ratify that Protocol. In any case, the provisions thereof incorporated by this Regulation should apply for the Community from no later than 31 December 2012.

(3) The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by the Protocol of 2002 (the Athens Convention), applies to international transport only. The distinction between national and international transport has been eliminated within the internal market in maritime transport services and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.

(4) The insurance arrangements required under the Athens Convention must take into consideration the financial means of ship-owners and insurance companies. Ship-owners must be in a position to manage their insurance arrangements in an economically acceptable way and, particularly in the case of small shipping companies operating national transport services, account must be taken of the seasonal nature of their operations. When setting insurance arrangements under this Regulation, account should therefore be taken of the different classes of ship.

(5) It is appropriate to oblige the carrier to make an advance payment in the event of the death of or personal injury to a passenger, whereby advance payment does not constitute recognition of liability.

(6) Appropriate information on rights being conferred on passengers should be provided to those passengers prior to their journey or, where that is not possible, at the latest on departure.

(7) The Legal Committee of the IMO adopted on 19 October 2006 the IMO Reservation and Guidelines for the Implementation of the Athens Convention (the IMO Guidelines) to address certain issues under the Athens Convention, such as, in particular, compensation for terrorism-related damage. As such, the IMO Guidelines may be considered a lex specialis.

(8) This Regulation incorporates and makes binding parts of the IMO Guidelines. To that end, where it occurs in the provisions of the IMO Guidelines, the verb ‘should’ should, in particular, be understood as ‘shall’.

(9) The provisions of the Athens Convention (Annex I) and of the IMO Guidelines (Annex II) should be understood, mutatis mutandis, in the context of Community legislation.

(10) The system of liability provided for by this Regulation should be extended step-by-step to the different classes of ship as set out in Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships. Account should be taken of the consequences for fares and the ability of the market to obtain affordable insurance coverage at the level required against the policy background of strengthening passengers' rights and the seasonal nature of some of the traffic.

(11) The matters covered by Articles 17 and 17bis of the Athens Convention fall within the exclusive competence of the Community in so far as those Articles affect the rules established by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. To that extent, these two provisions will form part of the Community legal order when the Community accedes to the Athens Convention.

(12) For the purposes of this Regulation, the expression ‘or is registered in a Member State’ should be considered to mean that the flag State for the purposes of bareboat charter-out registration is either a Member State or a contracting party to the Athens Convention. Necessary steps should be taken by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.

(13) For the purposes of this Regulation, the expression ‘mobility equipment’ should be considered to mean neither luggage nor vehicles within the meaning of Article 8 of the Athens Convention.

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(15) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(16) The European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council, should assist the Commission in preparing and drafting a progress report on the functioning of the rules laid down by this Regulation.

(17) The national authorities, particularly the port authorities, play a fundamental and vital role in identifying and managing the various risks in relation to maritime safety.

(18) Member States have taken the firm commitment in their Statement on Maritime Safety of 9 October 2008 to express, no later than 1 January 2012, their consent to be bound by the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996. Member States may make use of the option provided for in Article 15(3bis) of that Convention to regulate, by means of specific provisions of this Regulation, the system of limitation of liability to be applied to passengers.

(19) Since the objective of this Regulation, namely to create a single set of rules governing the rights of carriers by sea and their passengers in the event of an accident, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of:

(a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (the Athens Convention) as set out in Annex I; and

(b) the IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006 (the IMO Guidelines) as set out in Annex II.

2. Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, and lays down certain supplementary requirements.

3. No later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order, inter alia, to extend the scope of this Regulation to ships of Classes C and D under Article 4 of Directive 98/18/EC.

Article 2

Scope

This Regulation shall apply to any international carriage within the meaning of point 9 of Article 1 of the Athens Convention and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, where:

(a) the ship is flying the flag of or is registered in a Member State;

(b) the contract of carriage has been made in a Member State; or

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

Member States may apply this Regulation to all domestic sea-going voyages.

Article 3

Liability and insurance

1. The liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation, by Articles 1 and 1*bis*, Article 2(2), Articles 3 to16 and Articles 18, 20 and 21 of the Athens Convention set out in Annex I and by the provisions of the IMO Guidelines set out in Annex II.

2. The IMO Guidelines as set out in Annex II shall be binding.

Article 4

Compensation in respect of mobility equipment or other specific equipment

In the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility, the liability of the carrier shall be governed by Article 3(3) of the Athens Convention. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

Article 5

Global limitation of liability

1. This Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment thereto.

In the absence of any such applicable national legislation, the liability of the carrier or performing carrier shall be governed only by Article 3 of this Regulation.

2. In respect of claims for loss of life or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines the carrier and the performing carrier may limit their liability pursuant to the provisions referred to in paragraph 1 of this Article.

Article 6

Advance payment

1. Where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days of the identification of the person entitled to damages. In the event of the death, the payment shall not be less than EUR 21 000.

This provision shall also apply where the carrier is established within the Community.

2. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation. It shall not be refundable, except in the cases set out in Article 3(1) or Article 6 of the Athens Convention or Appendix A to the IMO Guidelines, or where the person who received it is not the person entitled to damages.

Article 7

Information to passengers

Without prejudice to the obligations of tour operators set out in Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, the carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation.

Where the contract of carriage is made in a Member State, that information shall be provided at all points of sale, including sale by telephone and via the Internet. Where the place of departure is in a Member State, that information shall be provided prior to departure. In all other cases, it shall be provided at the latest on departure. To the extent that the information required under this Article has been provided by either the carrier or the performing carrier, the other shall not be obliged to provide it. The information shall be provided in the most appropriate format.

In order to comply with the information requirement under this Article, the carrier and performing carrier shall provide passengers with at least the information contained in a summary of the provisions of this Regulation prepared by the Commission and made public.

Article 8

Reporting

No later than three years after the date of application of this Regulation, the Commission shall draw up a report on the application of this Regulation, which shall, inter alia, take into account economic developments and developments in international fora.

That report may be accompanied by a proposal for amendment of this Regulation, or by a proposal for a submission to be made by the Community before the relevant international fora.

Article 9

Amendment of the Annexes

1. The Commission is empowered to adopt delegated acts in accordance with Article 9a amending Annex I to this Regulation in order to incorporate the amendments to the limits set out in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 of the Athens Convention to take account of decisions taken pursuant to Article 23 of that Convention.

The Commission is empowered to adopt, by 31 December 2016 , on the basis of a suitable impact assessment, delegated acts in accordance with Article 9a amending the limits set out in Annex I to this Regulation for ships of Class B under Article 4 of Directive 2009/45/EC of the European Parliament and of the Council , taking into consideration the consequences for fares and the ability of the market to obtain affordable insurance coverage at the level required against the policy background of strengthening passengers' rights, as well as the seasonal nature of some of the traffic.

2. The Commission is empowered to adopt delegated acts in accordance with Article 9a amending Annex II in order to incorporate amendments to the provisions of the IMO Guidelines.

Article 9a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 9(1) and (2) shall be conferred on the Commission for a period of five years from 26 July 2019 . The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 9(1) and (2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making .

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 9(1) and (2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 10

Committee procedure

. . . . . .

Article 11

Transitional provisions

1. In respect of carriage by sea within a single Member State on board ships of Class A under Article 4 of Directive 98/18/EC, Member States may choose to defer application of this Regulation until four years after the date of its application.

2. In respect of carriage by sea within a single Member State on board ships of Class B under Article 4 of Directive 98/18/EC, Member States may choose to defer application of this Regulation until 31 December 2018.

Article 12

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date of the entry into force of the Athens Convention for the Community, and in any case from no later than 31 December 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

PROVISIONS OF THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA RELEVANT FOR THE APPLICATION OF THIS REGULATION(Consolidated text of the Athens Convention relating to the Carriage of Passengers

and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention)

Article 1

Definitions

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

1.

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

(b) ‘performing carrier’ means a person other than the carrier, being the 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;

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

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

4. ‘passenger’ means any person carried in a ship:

(a) under a contract of carriage; or

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

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

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

(b) live animals;

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

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

8. ‘carriage’ covers the following periods:

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

(b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the

carrier or his servant or agent and has not been re-delivered to the passenger;

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

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

10. ‘Organisation’ means the International Maritime Organisation;

11. ‘Secretary-General’ means the Secretary-General of the Organisation.

Article 1bis

Annex

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

Article 2

Application

1 ….

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

Article 3

Liability of the carrier

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250 000 units of account, unless the carrier proves that the incident:

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

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

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

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

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

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

5. For the purposes of this Article:

(a) ‘shipping incident’ means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;

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

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

(d) ‘loss’ shall not include punitive or exemplary damages.

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

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under 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 4

Performing carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

Article 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.

(a) A State Party may authorise an institution or an organisation recognised by it to issue the certificate. Such institution or organisation 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 organisation 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 on which notification to that effect was given to the Secretary-General.

(c) The institution or organisation authorised to issue certificates in accordance with this paragraph shall, as a minimum, be authorised to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organisation 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 Organisation or other international organisations 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 5

Valuables

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

Article 6

Contributory fault

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

Article 7

Limit of liability for death and personal injury

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400 000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

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

Article 8

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

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

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12 700 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3 375 units of account per passenger, per carriage.

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

Article 9

Unit of Account and conversion

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3(1), Article 4*bis*(1), Article 7(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(1), Article 4*bis*(1), Article 7(1) and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.

2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

Article 11

Defences and limits for carriers' servants

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

Article 12

Aggregation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

Article 13

Loss of right to limit liability

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

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

Article 14

Basis for claims

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

Article 15

Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent:

(a) in the case of apparent damage to luggage:
  (i) for cabin luggage, before or at the time of disembarkation of the passenger;
  (ii) for all other luggage, before or at the time of its re-delivery;

(b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2 .If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

Article 16

Time-bar for actions

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

2. The limitation period shall be calculated as follows:

(a) in the case of personal injury, from the date of disembarkation of the passenger;
(b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
(c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

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

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

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

Article 17

Competent jurisdiction

Article 17bis

Recognition and enforcement

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 20

Nuclear damage

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

(a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.

Article 21

Commercial carriage by public authorities

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

Articles 22 and 23 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

Article 22

Revision and amendment

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(1), Article 4*bis*(1), Article 7(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(1), Article 4*bis*(1), Article 7(1) and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary General to all Members of the Organisation and to all States Parties.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organisation (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 Organisation, 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.

(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 Organisation to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of 18 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 18 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 18 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.

ANNEX TO ATHENS CONVENTION

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 4*bis* 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 abovenamed ship a policy of insurance or other financial security satisfying the requirements of Article 4*bis* 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 4*bis*, 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 II

Extract From the IMO Reservation and Guidelines for Implementation of THE ATHENS Convention, adopted by the Legal Committee of the INTERNATIONAL MARITIME ORGANISATION on 19 October 2006 IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION OF THE ATHENS CONVENTION

Reservation

1. The Athens Convention should be ratified with the following reservation or a declaration to the same effect:

> ‘[1.1.] Reservation in connection with the ratification by the Government of … 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 … 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 … 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 … 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 … 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 … 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 … reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4bis from any liability for which he has not undertaken to be liable.

Certification

[1.10.] The Government of … 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 … 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 4bis 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 Organisation, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.'

Guidelines

2. In the current state of the insurance market, State Parties should issue insurance certificates on the basis of one undertaking from an insurer covering war risks, and another insurer covering non war risks. Each insurer should only be liable for its part. The following rules should apply (the clauses referred to are set out in Appendix A):

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

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

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

2.1.3.the defences and 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;

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

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

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

2.2.1.*War Automatic Termination and Exclusion Clause*

2.2.2.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 any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.

2.2.3.30 days notice clause in cases not covered by 2.2.1.

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

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

APPENDIX A

Clauses referred to in guidelines 2.1.1, 2.1.2 and 2.2.1

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. ionising 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 10.2 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 10.1 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;

1.2.2. requisition either for title or use.

APPENDIX B

I. **Examples of insurance undertakings (Blue Cards) referred to in guideline 3**

Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4*bis* 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 4*bis* 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 Organisation in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent

desirable]

Period of insurance from: 20 February 2007

to: 20 February 2008

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:

This certificate has been issued by:	War Risks, Inc [Address]
… Signature of insurer	As agent only for *War Risks, Inc*.

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4*bis* 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 4*bis* 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 Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organisation in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]

Period of insurance from: 20 February 2007

to: 20 February 2008

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:	PANDI P&I [Address]
… Signature of insurer	As agent only for *PANDI P&I*

II. **Model of certificate of insurance referred to in guideline 3**

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 4*bis* 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 abovenamed ship a policy of insurance or other financial security satisfying the requirements of Article 4*bis* 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 Organisation 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: War Risks, Inc., [address]

For non-war risks: Pandi P&I, [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 4*bis*, 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.