



Athens Protocol 2002 in a nutshell

On 23 April 2014 the 2002 Protocol to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974, enters into force. The following is a brief summary of the most important features.

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Please also see Gard [P&I Member Circular 2/2014](#) for further information, particularly regarding certification compliance issues.

The 2002 Protocol to the Athens Convention entered into force on 23 April 2014. It substantially increases the ship's limits of liability compared to the 1974 Athens Convention, both as concerns death of or personal injury to passengers, as well as loss of or damage to passengers' vehicles and luggage. Furthermore, it includes strict liability provisions for 'shipping incident' claims and introduces protection for claimants through compulsory insurance and rights of direct action.

2002 Protocol – Key Features 'Shipping Incidents' The carrier is strictly liable in the event of the death of or personal injury to a passenger resulting from a 'shipping incident'

- defined as the shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship

Unless the carrier proves the incident resulted

- from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible nature; or
- was wholly caused by an act or omission done with the intent to cause the incident by a third party.

The strict liability applies up to SDR 250,000 per passenger. If the loss per passenger arising out of 'shipping incidents' exceeds SDR 250,000 the carrier will be liable up to an overall limit of SDR 400,000 per passenger each distinct occasion unless the carrier proves that the incident causing the loss occurred without his fault or negligence. State parties may introduce higher limits of liability for passenger vessels flying their flag or for foreign vessels calling their ports.

Other incidents than 'Shipping Incidents' Where death or personal injury result from other incidents the basis of liability is negligence with the burden of proof resting on the claimant. The carrier is liable only if the claimant is able to prove that the death or personal injury was caused by the fault or neglect of the carrier. The position is the same as under the Athens Convention, 1974.

Damage to luggage and vehicles The passenger has the onus of proving fault or neglect on the part of the carrier as concerns liability for loss of or damage to certain types of passenger property. The limits of liability for loss of or damage to such property have been increased as follows:

- Cabin luggage: SDR 2,250 per passenger, per carriage.
- Vehicles, including all luggage carried in or on the vehicle: SDR 12,700 per vehicle, per carriage.
- Other luggage: SDR 3,375 per passenger, per carriage.

Insurance and certification requirements Article 4 *bis* of the Convention introduces a requirement on passenger ship carriers and performing carriers engaged in international voyages, to maintain insurance that complies with the requirements of the Convention, i.e. if they are registered in a state party to the Convention or calling at or leaving the port of a state party. Such carriers will also need to obtain a certificate issued by a party to the Convention confirming that such insurance is in force.

The insurance and certification requirements under the Convention applies both to liabilities arising from war and terrorism risks, in which case a War Passenger Blue Card is required, as well as to maritime and other non-war risks, in which case a Non-War Passenger Blue Card is required.

The International Group P&I Clubs do not cover war and terrorism risks and do not provide guarantees in the form of War Risk Blue Cards to cover liabilities arising out of such risks under the Convention. War Risk Blue Cards are thus provided by special purpose insurers, e.g. [Shoreline Passenger Solutions](#) .

Non-War Passenger Blue Cards are provided by the International Group P&I Clubs, including Gard. Liabilities arising under such blue cards are covered by the International Group pool and reinsurance covers up to the limits for, respectively, 'Passenger' claims and 'Passenger'/'Seamen' combined. See further comments in the final paragraph below.

Some uncertainty exists at this time as to whether all non-EU/EEA States where the Protocol is in force will accept as evidence of insurance under the Athens Convention a certificate issued by an EU/EEA State under the EU Passenger Liability Directive (PLR), which rules are closely modelled on the Convention. For further details, please see our [P&I Member Circular 2/2014](#) .

The 2006 "reservation" IMO's Legal Committee adopted in October 2006 the text of a [reservation](#) to the 2002 Protocol and adopted *Guidelines for the implementation of the Athens Convention, to allow limitation of liability in respect of claims relating to war or terrorism* .

According to the reservation a State Party may reserve the right to and undertake to limit liability to SDR 250,000 in respect of each passenger on each distinct occasion; or SDR 340 million overall per ship on each distinct occasion. This relates in particular to war insurance which, under the guidelines, shall cover liability, if any, for loss suffered as a result of death or personal injury to a passenger caused by:

- War, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
- Capture, seizure, arrest, restraint or detention, and the consequences thereof or any attempt thereat; derelict mines, torpedoes, bombs or other derelict weapons of war;
- Act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk;
- Confiscation and expropriation.

Limitation and insurer exposure The combination in the 2002 Protocol of strict liability for ‘shipping incidents’, compulsory insurance requirements both for non-war and war risks, substantially increased limits of liability, as well as entry into force of the PLR before the entry into force of the Protocol – has caused certain implementation challenges. The strict liability exposure (with very limited *force majeure* exceptions) of the International Group P&I Clubs as providers of Non-War Passenger Blue Cards does for the largest passenger ships is substantially higher than compulsory insurance regimes in other international liability conventions.

Because of the significant increase of the ‘per passenger’ limit of liability under the 2002 Protocol and the abolition of an overall express limit of liability determined by the maximum number of passengers that the vessel is certified to carry, there is a risk that the aggregate of all claims which might result from a catastrophic loss of a large passenger ship could potentially exceed the limit of the International Group excess of loss reinsurance, and thereby lead to an overspill claim. Hence, special limits of cover for ‘Passenger’ liabilities of USD 2 billion any one event and USD 3 billion any one event for ‘Passenger’ and ‘Seamen’ liabilities combined, will apply. See Rule 53.3 and Appendix IV of the 2014 Gard Rules for Ships in this regard.

Gard will monitor the implementation of the 2002 Protocol including the interplay with the PLR and revert with further information in due course to address more specific issues that may arise.

ANNEX

Contracting States: There are currently 17 contracting states, of which 11 have deposited the 2006 Reservation (to cap liabilities for terrorism related incidents)

Date of Entry into Force: 23 April 2014 10 contracting states are EU/EEA States (marked with an asterisk) where the PLR applies.

Country/Territory	Deposit Date	Date of Country Entry into Force	2006 Reservation
Albania	16/03/2005	23/04/2014	No
Belgium*	23/04/2013	23/04/2014	Yes
Belize	22/08/2011	23/04/2014	No
Bulgaria*	10/12/2013	23/04/2014	Yes
Croatia*	25/09/2013	23/04/2014	Yes
Denmark*	23/05/2012	23/04/2014	Yes
Greece*	06/12/2013	23/04/2014	Yes
Latvia*	17/02/2005	23/04/2014	Yes
Malta*	07/08/2013	07/11/2013	Yes
Netherlands*	26/09/2012	23/04/2014	Yes
Norway*	26/11/2013	23/04/2013	Yes
Palau	29/09/2011	23/04/2014	No
Panama	23/01/2014	23/04/2014	Yes
Saint Kitts and Nevis	30/08/2005	23/04/2014	No
Serbia	25/05/2011	23/04/2014	No
Syrian Arab Republic	10/03/2005	23/04/2014	No
United Kingdom*	21/01/2014	23/04/2014	Yes

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