

Malawi

## Carriage by Air Act

### Chapter 70:02

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# Carriage by Air Act

## Contents

Part I – Preliminary .....	1
1. Short title .....	1
2. Interpretation .....	1
3. Text of Conventions and Protocol .....	1
4. Designation of High Contracting Parties .....	2
Part II – Carriage to which the Warsaw Convention and the Hague Protocol apply .....	2
5. Meaning of "the Convention" in Part II .....	2
6. Convention to have the force of law .....	2
7. Conversion of damages into Malawi currency .....	2
8. Provisions relating to proceedings for damages in respect of death of passenger .....	2
9. Liability of carrier for personal injuries to be exclusive of the other civil liability .....	3
10. Liability of carrier to persons other than passengers .....	3
11. Certain sums not to be taken into account in assessment of damages .....	3
12. Contributory negligence .....	4
13. Jurisdiction in certain cases .....	4
14. Power to exclude aircraft used for military purposes .....	4
Part III – Carriage to which the Warsaw Convention without the Hague Protocol applies .....	4
15. Meaning of "the Convention" in Part III .....	4
16. Warsaw Convention to have the force of law .....	4
17. Provisions of Part II applicable to this Part .....	4
Part IV – Carriage to which the Guadalajara Convention applies .....	5
18. Guadalajara Convention to have the force of law .....	5
19. Construction of Parts II and III in for purposes of Guadalajara Convention .....	5
Part V – Other carriage to which this Act applies .....	5
20. Meaning of "the amended Warsaw Convention" in Part V .....	5
21. Modifications of Conventions for purposes of this Part .....	5
22. Powers of Minister .....	5
Part VI – Miscellaneous .....	5
23. Liability of persons other than carrier .....	5
24. Regulations .....	5
25. Act to bind the Government .....	6
First Schedule (Section 3 (1)) .....	6
Second Schedule (Section 3 (2)) .....	15
Third Schedule (Section 3 (3)) .....	22

Fourth Schedule (Section 21) .....	26
Fifth Schedule (Section 21) .....	31



# Malawi

## Carriage by Air Act

### Chapter 70:02

Commenced on 23 January 1982

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to make provision with respect to carriage by air and to give effect to the Warsaw Convention, the Hague Protocol and the Convention supplementary to the Warsaw Convention for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, for the repeal of the Carriage by Air Act and for matters incidental to and connected with the foregoing**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the carriage by Air Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

**"the Guadalajara Convention"** means the Convention supplementary to the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air performed by a Person other than the Contracting Carrier opened for signature at Guadalajara on the 18th September, 1961;

**"the Hague Protocol"** means the Protocol to amend the Warsaw Convention opened for signature at the Hague on the 28th September, 1955;

**"the Warsaw Convention"** means the Convention for the Unification of Certain Rules relating to International Carriage by Air opened for signature at Warsaw on the 12th October, 1929, including the Additional Protocol to that Convention with reference to Article 2 of that Convention.

#### 3. Text of Conventions and Protocol

- (1) Subject to subsection (4), the text of the Warsaw Convention shall, for the purposes of this Act, be deemed to be the text in the English language set out in the First Schedule.
- (2) Subject to subsection (4), the text of the Hague Protocol shall, for the purposes of this Act, be deemed to be the text in the English language set out in the Second Schedule.
- (3) Subject to subsection (4), the text of the Guadalajara Convention shall, for the purposes of this Act, be deemed to be the text in the English language set out in the Third Schedule.
- (4) If any inconsistency is shown between the text set out in the First Schedule or the Second Schedule or the Third Schedule and the authentic text in the French language of the Warsaw Convention or the Hague Protocol or the Guadalajara Convention the authentic text shall prevail.
- (5) A certificate in writing under the hand of the Minister that a document to which the certificate annexed is a true copy of the authentic text in the French language of the Warsaw Convention or the Hague Protocol or the Guadalajara Convention is conclusive evidence that the document is such a true copy.

#### 4. Designation of High Contracting Parties

- (1) The Minister may from time to time—
  - (a) certify who are the High Contracting Parties to the Warsaw Convention or the Hague Protocol, the territory in respect of which any such party is bound by the Convention and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention;
  - (b) certify who are the States that have or have not taken any action referred to in Article II, III, XIV, XV or XVI of the Guadalajara Convention and as to the particulars of any action so taken.
- (2) Any certificate issued under subsection (1) shall, except in so far as it has been superseded by a subsequent certificate, be conclusive evidence of the matters so certified.

### Part II – Carriage to which the Warsaw Convention and the Hague Protocol apply

#### 5. Meaning of "the Convention" in Part II

In this Part, "the Convention" means the Warsaw Convention and the Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of the Hague Protocol.

#### 6. Convention to have the force of law

Subject to this part provisions of the Convention, shall have the force of law in Malawi in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

#### 7. Conversion of damages into Malawi currency

Any sum in francs mentioned in Article 22 of the Convention shall, for the purposes of an action against a carrier, be converted into Malawi currency at the rate of exchange prevailing on the date on which the amount of any damages to be paid by the carrier is ascertained by the court.

#### 8. Provisions relating to proceedings for damages in respect of death of passenger

- (1) The provisions of this section shall apply in relation to liability imposed by the Convention on a carrier in respect of the death of a passenger (including injury that resulted in death).
- (2) Subject to [section 10](#), the liability under the Convention shall be in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that resulted in such death.
- (3) Subject to subsection (4), the liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of the death.
- (4) To the extent that the damages recoverable include loss of earnings or profits up to the date of death, or medical or hospital expenses paid or incurred by the passenger before his death or funeral expenses, the liability shall be enforceable for the benefit of the personal representative in his capacity as personal representative of the deceased.
- (5) For the purposes of subsection (3), the members of the passenger's family may include the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, stepchildren and grandchildren of the passenger and an adopted person shall be treated as being, or as having been, the legitimate child of his adopters.

- (6) An action to enforce the liability may be brought by the personal representative of a deceased passenger or by a person for whose benefit the liability is, under the preceding provisions of this section, enforceable, but only one action shall be brought in Malawi in respect of the death of any one passenger, and the action, by whomsoever brought, shall be for the benefit of all persons for whose benefit the liability is enforceable.
- (7) The damages recoverable in the action may include loss of earnings or profits up to the date of death and the reasonable expenses of the funeral of the passenger and medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.
- (8) In awarding damages, the court is not limited to the financial loss resulting from the death of the passenger.
- (9) Subject to subsection (10), the amount recovered in the action, after deducting any costs not recoverable from the defendant, shall be divided amongst the persons entitled in such proportions as the court directs.
- (10) The court may at any stage of the proceedings make such order as appears to it to be just and equitable having regard to the provisions of the Convention limiting the liability of the carrier and to any proceedings which have been, or are likely to be, commenced against the carrier, whether within or outside Malawi.

## **9. Liability of carrier for personal injuries to be exclusive of the other civil liability**

Subject to [section 10](#), the liability of a carrier under the Convention in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, shall be in substitution for any civil liability of the carrier under any other law in respect of the injury.

## **10. Liability of carrier to persons other than passengers**

Nothing in the Convention or in this Part shall be deemed to exclude any liability of a carrier—

- (a) to indemnify an employer of a passenger in respect of liability of that employer under any written law providing for compensation to workmen or employees in respect of accidents arising out of or in the course of their employment; or
- (b) to pay contribution to a tortfeasor who is liable in respect of the death of, or injury to, a passenger, but this section does not operate to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with the Convention.

## **11. Certain sums not to be taken into account in assessment of damages**

In assessing damages in respect of liability under the Convention, there shall not be taken into account by way of reduction of the damages—

- (a) a sum paid or payable on the death of, or personal injury to a passenger under contract of insurance;
- (b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union;
- (c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person;
- (d) in the case of death, any sum in respect of the acquisition consequent upon the death by a spouse or child of the deceased of, or of an interest in, a dwelling at any time used as the home of that spouse or child, or of, or of an interest in, the household contents of any such dwelling; or
- (e) the case of death, a premium that would have become payable under a contract of insurance in respect of the life of the deceased passenger if he had lived after the time at which he died.

## 12. Contributory negligence

- (1) Effect shall be given to Article 21 of the Warsaw Convention in accordance with this section.
- (2) If, in an action against a carrier under the Convention, the carrier proves that the damage was caused or contributed to by the negligence of the passenger or the consignor, the damages recoverable shall be assessed in accordance with this section.
- (3) The Court shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with the Convention and there had been no negligence on the part of the passenger or consignor.
- (4) The Court shall then reduce the damages under subsection (3) as it thinks just and equitable having regard to the share of the passenger or the consignor in the responsibility for the damage.
- (5) If the damages, reduced in accordance with subsection (4), exceed the amount of the maximum liability of the carrier fixed by or in accordance with the Convention, the Court shall further reduce the damages to that amount.

## 13. Jurisdiction in certain cases

- (1) A Party to the Convention which has not availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention shall, for the purpose of an action under the Convention brought in a court in Malawi to enforce a claim in respect of carriage undertaken by that Party, be deemed to have submitted to the jurisdiction of that Court.
- (2) Nothing in subsection (1) shall be deemed to authorize the issue of execution against the property of a Party to the Convention.

## 14. Power to exclude aircraft used for military purposes

- (1) The Convention shall not apply to carriage of persons, cargo or baggage for the military authorities of a State to which this section applies in aircraft registered in that State, if the entire carrying capacity of the aircraft has been reserved by or on behalf of those authorities.
- (2) The Minister may, from time to time, by order published in the *Gazette*, direct that this section shall apply, or shall cease to apply, to Malawi or any other State specified in the notice.

## Part III – Carriage to which the Warsaw Convention without the Hague Protocol applies

## 15. Meaning of "the Convention" in Part III

In this Part, "the Convention" means the Warsaw Convention as unamended and unaffected by the Hague Protocol.

## 16. Warsaw Convention to have the force of law

Subject to this Part, the provisions of the Convention shall have the force of law in the Republic in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

## 17. Provisions of Part II applicable to this Part

The provisions of [sections 8 to 14](#) inclusive apply for the purpose of this Part.



## Part IV – Carriage to which the Guadalajara Convention applies

### 18. Guadalajara Convention to have the force of law

The provisions of the Guadalajara Convention shall, subject to Parts II and III as modified and affected by [section 19](#), have the force of law in Malawi in relation to any carriage by air to which that Convention applies, irrespective of the nationality of the aircraft performing that carriage.

### 19. Construction of Parts II and III in for purposes of Guadalajara Convention

In relation to carriage to which the Guadalajara Convention applies, references in Part II (other than [section 6](#)) and Part III (other than [section 16](#)) to "the Convention" shall be read and construed as including references to those provisions of the Guadalajara Convention which have the force of law by virtue of this Part.

## Part V – Other carriage to which this Act applies

### 20. Meaning of "the amended Warsaw Convention" in Part V

In this Part, "the amended Warsaw Convention" means the Warsaw and the Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of the Hague Protocol.

### 21. Modifications of Conventions for purposes of this Part

Subject to the provisions of [section 22](#), the provisions of the amended Warsaw Convention and of the Guadalajara Convention having force of law in Malawi as adopted and modified in the Fourth and Fifth Schedules respectively shall apply to all carriage by air, not being international carriage as defined in Article 1 of the Second Schedule.

### 22. Powers of Minister

The Minister may, by order published in the *Gazette*, direct that the provisions of this Part shall not apply, or shall not apply to a specified class of carriage by air, and any such direction may be expressed to be and if so expressed shall take effect subject to any conditions or limitations which in the circumstances of the case appear to the Minister to be required.

## Part VI – Miscellaneous

### 23. Liability of persons other than carrier

- (1) In an action for damages arising out of the death or bodily injury of a passenger by air occasioned by the negligence of any person other than the carrier, its servants or agents, the sum awarded shall not exceed K20,000 in addition to the costs of the action and, in making its award, the court shall take into consideration any sum paid by the carrier.
- (2) The provisions of subsections (3), (4), (5), (6), (7) and (8) of [section 8](#) apply for the purposes of this section.

### 24. Regulations

The Minister may, by notice published in the *Gazette*, make regulations, not inconsistent with this Act, which are necessary or convenient to be prescribed for giving effect to this Act, the Warsaw Convention, the Warsaw Convention as amended and affected by the Hague Protocol or the Guadalajara Convention.

**25. Act to bind the Government**

This Act shall bind the Government.

**First Schedule (Section 3 (1))**

**Convention for the Unification of Certain  
Rules relating to International Carriage by Air**

**Chapter I  
Scope definitions**

**Article 1**

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.
3. Carriage to be performed by several successive air carriers is deemed for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

**Article 2**

1. The Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. This Convention does not apply to carriage performed under the terms of any international postal convention.

**Chapter II  
Documents of carriage**

**1. Passenger ticket**

### Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars—
  - (a) the place and date of issue;
  - (b) the place of departure and of destination;
  - (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
  - (d) the name and address of the carrier or carriers;
  - (e) a statement that the carriage is subject to the rules relating to liability established by this Convention.
2. The absence, irregularity, or loss of the passenger ticket does not affect the existence or the validity of the contract or carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

### 2. Baggage check

### Article 4

1. For the carriage of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.
2. The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.
3. The baggage check shall contain the following particulars—
  - (a) the place and date of issue;
  - (b) the place of departure and of destination;
  - (c) the name and address of the carrier or carriers;
  - (d) the number of the passenger ticket;
  - (e) a statement that delivery of the baggage will be made to the bearer of the baggage check;
  - (f) the number and weight of the packages;
  - (g) the amount of the value declared in accordance with Article 22 (2);
  - (h) a statement that the carriage is subject to the rules relating to liability established by this Convention.
4. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless if the carrier accepts baggage without a baggage check, having been delivered or if the baggage check does not contain the particular set out at (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

### 3. Air waybill

## Article 5

1. Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "waybill"; every consignor has the right to require the carrier to accept this document.
2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

## Article 6

1. The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.
2. The first part shall be marked "for the carrier", and shall be signed by the consignor The second part shall be marked "for the consignee", it shall be signed by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.
3. The carrier shall sign on acceptance of the cargo.
4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.
5. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

## Article 7

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

## Article 8

The air waybill shall contain the following particulars—

- (a) the place and date of its execution;
- (b) the place of departure and of destination;
- (c) the agreed stepping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of cargo;
- (h) the number of packages, the method of packing and the particular marks or numbers upon them;
- (i) the weight, the quantity and the volume or dimensions of the cargo;
- (j) the apparent condition of the cargo and of the packing;
- (k) the freight, if it has been agreed upon, the date and place of payment and the person who is to pay it;
- (l) if the cargo is sent for payment on delivery, the price of the cargo, and, if the case so requires, the amount of the expenses incurred;

- (m) the amount of the value declared in accordance with Article 22 (2);
- (n) the number of parts of the air waybill;
- (o) the documents handed to the carrier to accompany the air waybill;
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;
- (q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

### Article 9

If carrier accepts cargo without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in Article 8 (a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

### Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.
2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

### Article 11

1. The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.
2. The statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of package, are *prima facie* evidence of the facts stated; those relating to the quantity volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

### Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the orders of the consignor, the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part, of the waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

### **Article 13**

1. Except in the circumstances set out in the preceding article the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

### **Article 14**

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13 each in his own name whether he is acting in his own interest or that of another, provided that he carries out the obligations imposed by the contract.

### **Article 15**

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.

### **Article 16**

1. The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs control or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.
2. The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

## **Chapter III**

### **Liability of the carrier**

### **Article 17**

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

## Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.
2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of landing outside an aerodrome, in any place whatsoever.
3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

## Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers' baggage or cargo.

## Article 20

1. The carrier is not liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.
2. In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

## Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

## Article 22

1. In the carriage of passengers, the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2. In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.
4. The sums mentioned above shall be deemed to refer to the French franc consisting of sixty-five and a half milligrams gold of millesimal fineness nine hundred. These sums may be converted into any national currency in round figures.

### Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than, that which is laid down in this Convention shall be null and void, but the nullity of any such provisions does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

### Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.
2. In the cases covered, by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to whom the persons who have the right to bring suit and what are their respective rights.

### Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as in accordance with the law of the Court seized of the case, is considered to be equivalent to willful misconduct.
2. Similarly the carrier shall not be entitled to avail himself of the said provisions if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his employment.

### Article 26

1. Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of baggage and seven days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the baggage or cargo has been placed at his disposal.
3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.
4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

### Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

### Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident or has his principal place of business or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.



2. Questions of procedure shall be governed by the law of the Court seized of the case.

### **Article 29**

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

### **Article 30**

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subject to the rules set out in this Convention, and is deemed to be one, of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
3. As regards baggage or cargo, the passenger or consignor will have, a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, or damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

## **Chapter IV**

### **Provisions relating to combined carriage**

### **Article 31**

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## **Chapter V**

### **General and final provisions**

### **Article 32**

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

### Article 33

Nothing contained in this convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

### Article 34

This Convention does not apply to international damage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

### Article 35

The expression "days" when used in this Convention means current days, not working days.

### Article 36

This Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

### Article 37

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.
2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification, on the ninetieth day after the deposit.
3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

### Article 38

1. This Convention shall, after it has come into force, remain open for accession by any State.
2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties there.
3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

### Article 39

1. Any one of the High Contracting Parties may denounce Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.

2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

### Article 40

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession, declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.
2. Accordingly any High Contracting Party may subsequently accede separately the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.
3. Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

### Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention call for the assembling of a new international conference in order to consider any improvements which may be made in this Convention. To this end, he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

*(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed)*

### Additional protocol

#### *(With reference to Article 2)*

The High Contracting Parties reserve to themselves the right to declare at the time of ratification accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates, or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

*(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Additional Protocol was signed)*

### Second Schedule (Section 3 (2))

#### Protocol

to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October 1929.

THE GOVERNMENTS UNDERSIGNED

Considering that it is desirable to amend the convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929.

Have agreed as follows—

## Chapter I Amendments to the Convention

### Article I

In Article 1 of the Convention—

- (a) paragraph 2 shall be deleted and replaced by the following—

"2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention."

- (b) paragraph 3 shall be deleted and replaced by the following—

"3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State."

### Article II

In Article 2 of the Convention, paragraph 2 shall be deleted and replaced by the following—

"2. This Convention shall not apply to carriage of mail and postal packages."

### Article III

In Article 3 of the Convention—

- (a) paragraph 1 shall be deleted and replaced by the following—

"1. In respect of the carriage of passengers a ticket shall be delivered containing—

- (a) an indication of the places of departure and destination.
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and, in most cases, limits the liability of carriers for death or personal injury and in respect of loss or of damage to baggage."

- (b) paragraph 2 shall be deleted and replaced by the following—

"2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier the passenger embarks without a passenger

ticket having been delivered, or if the ticket does not include the notice required by paragraph 1 (c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22."

## Article IV

In Article 4 of the Convention—

- (a) paragraph 1, 2 and 3 shall be deleted and replaced by the following—

"1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain—

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the consignor to the effect that if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage."

- (b) paragraph 4 shall be deleted and replaced by the following—

"2. The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall nonetheless, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph 1 (c) does not include the notice required by paragraph 1 (c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2."

## Article V

In Article 6 of the Convention paragraph 3 shall be deleted and replaced by the following—

"3. The carrier shall sign prior to the loading of the cargo on board the aircraft."

## Article VI

Article 8 of the Convention shall be deleted and replaced by the following—

"The air waybill shall contain—

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo."

## Article VII

Article 9 of the Convention shall be deleted and replaced by the following—

"If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by Article 8, paragraph (c), the carrier shall not be entitled to vail himself of the provisions of Article 22, paragraph 2."

## Article VIII

In Article 10 of the Convention paragraph 2 shall be deleted and replaced by the following—

"2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor."

## Article IX

To Article 15 of the Convention the following paragraph shall be added—

"3. Nothing in this Convention prevents the issue of a negotiable air waybill."

## Article X

Paragraph 2 of Article 20 of the Convention shall be deleted.

## Article XI

Article 22 of the Convention shall be deleted and replaced by the following—

"Article 22

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2.
  - (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.
  - (b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

4. The limits prescribed in this Article shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.
5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of judgment."

## Article XII

In Article 23 of the Convention, the existing provision shall be renumbered as paragraph 1 and another paragraph shall be added as follows—

"2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried."

## Article XIII

In Article 25 of the Convention, paragraphs 1 and 2 shall be deleted and replaced by the following—

"The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."

## Article XIV

After Article 25 of the Convention, the following Article shall be inserted—

"Article 25A"

1. If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.
2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result."

## Article XV

In Article 26 of the Convention paragraph 2 shall be deleted and replaced by the following—

"2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal."

## Article XVI

Article 34 of the Convention shall be deleted and replaced by the following—

"The provisions of Articles 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business."

## Article XVII

After Article 40 of the Convention, the following Article shall be inserted—

"Article 40A

1. In Article 37, paragraph 2, and Article 40, paragraph 1, the expression High Contracting Party shall mean State. In all other cases, the expression High Contracting Party shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.
2. For the purposes of the Convention the word territory means not only the metropolitan territory of a State but also all other territories for the foreign relation of which that State is responsible."

## Chapter II

### Scope of application of the Convention as amended

## Article XVIII

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place within the territory of another State.

## Chapter III

### Final clauses

## Article XIX

As between the Parties to this Protocol, to Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Warsaw Convention as amended at The Hague, 1955.

## Article XX

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

## Article XXI

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.



## Article XXII

1. As soon as thirty signatory States have deposited their instruments of ratification of line Protocol, it shall come into force between them on the ninetieth day after the deposit of the. thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

## Article XXIII

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

## Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
2. Denunciation shall take effect six months after the date of the receipt by the Government of the People s Republic of Poland of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

## Article XXV

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 22 of this Article.
2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
3. Any State may subsequently, by notification to the Government of the People's Republic of Poland extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.
4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

## Article XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by the Protocol

shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

## Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Government of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization—

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification of or adherence in respect of this Protocol and the date thereof;
- (c) of the date on which this Protocol comes into force in accordance with Article XXII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XXV and the date thereof; and
- (f) of the receipt of any notification made under Article XXVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at the Hague on the 28th day of the month of September, of the year one thousand, nine hundred and fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX, it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol and all States Members of the International Civil Aviation Organization or of the United Nations, and to the International Civil Aviation Organization.

*(Here follow the signatures of the Plenipotentiaries of which the Protocol was signed.)*

## Third Schedule (Section 3 (3))

### Convention

Supplementary to the Warsaw Convention for the unification of Certain Rules relating to International Carriage by Air performed by a Person other than the Contracting Carrier.

### *The States signatory to the present Convention*

NOTING that the Warsaw Convention does not contain particular rules relating to International Carriage by Air performed by a person who is not a party to the agreement for carriage.

CONSIDERING that it is therefore desirable to formulate rules to apply in such circumstances have agreed as follows—

## Article I

In this Convention—

- (a) "Warsaw Convention" means the Convention for the unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October, 1929, or the Warsaw Convention as amended at the

Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;

- (b) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage, contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

## Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article 1, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

## Article III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of the servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Conventions. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

## Article IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

## Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

## Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting 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 contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

## Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the Court seized of the case.

## Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a Court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the Court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

## Article IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which, is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.
2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.
3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the Parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

## Article X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

## Article XI

Until the date on which this Convention comes into force in accordance with the provisions of Article VIII, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

## Article XII

1. This Convention shall be subject to ratification by the signatory States.
2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

## Article XIII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth

instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organization by the Government of the United States of Mexico.

#### **Article XIV**

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.

#### **Article XV**

1. Any Contracting State may denounce this Convention by notification addressed to the Government of the United States of Mexico.
2. Denunciation shall take effect six months after the date of receipt by the Government of the United States of Mexico of the notification of denunciation.

#### **Article XVI**

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the Government of the United States of Mexico that the Convention shall extend to any of the territories for whose international relations it is responsible.
2. The Convention shall, ninety days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.
3. Any Contracting State may denounce this Convention, in accordance with the provisions of Article XV, separately for any or all of the territories for the international relations of which such State is responsible.

#### **Article XVII**

No reservation may be made to this Convention.

#### **Article XVIII**

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organization and to all States Members of the United Nations or of any of the Specialized Agencies—

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article XIII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration of notification made under Article XVI and the date thereof.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Guadalajara on the eighteenth day of September, one thousand, nine hundred and sixty-one, in three authentic texts drawn up in the English, French and Spanish languages. In ease of any inconsistency, the text in

the French language, in which language the Warsaw Convention of 12 October, 1929 was drawn up shall prevail. The Government of the United States of Mexico will establish an official translation of the text of the Convention in the Russian language.

This Convention shall be deposited with the Government of the United States of Mexico with which, in accordance with Article XI, it shall remain open for signature, and that Government shall send certified copies thereof to the International Civil Aviation Organization and to all States Members of the United Nations or of any Specialized Agency.

*(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention has been signed.)*

## **Fourth Schedule (Section 21)**

### **Chapter I Scope**

#### **Article I**

- (1) This Schedule applies to all carriage of passengers, luggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

#### **Article II**

- (2) This Schedule does not apply to the carriage of mail and postal packets.

### **Chapter II Documents of carriage**

#### **3. Air waybill**

#### **Article 5**

- (1) Every carrier of cargo has the right to require the consignor to make out and hand over to him an air waybill.
- (2) The absence or loss of this document does not affect the existence or the validity of the contract of carriage which shall be nonetheless governed by the provisions of this Schedule.

*[Please note: numbering as in original.]*

#### **Article 7**

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

*[Please note: numbering as in original.]*

### Article 10

- (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill, if any.
- (2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the incorrectness or incompleteness of the said particulars and statements.

### Article 11

- (1) The air waybill, if any, is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.
- (2) Any statements in an air waybill relating to the weight dimensions and packing of cargo, or relating to the number of packages, are *prima facie* evidence of the facts stated; any such statements relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been and, are stated in the air waybills to have been, checked by him in the presence of the consignor or relate to the apparent condition of the cargo.

### Article 12

- (1) Subject to his liability to carry out all the obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the carriage on any landing, or by calling for it to be delivered at the place of destination in the course of the carriage to a person other than the original consignee or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
- (2) If it is not reasonably practicable to carry out the orders of the consignor the carrier must so inform him forthwith.
- (3) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill, if any, or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

### Article 13

- (1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him on payment of the charges due and on complying with the conditions of the contract of carriage.
- (2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
- (3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at to expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

### Article 14

The consignor and the consignee can respectively enforce all the rights given them by Article 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

### Article 15

- (1) Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
- (2) The provisions of Articles 12, 13 and 14 can only be varied by special contract in writing between the parties.

### Article 16

- (1) The consignor must furnish such information and documents as are necessary to meet the formalities of customs control or police, before the cargo can be delivered to the consignee. The consignor is liable, to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.
- (2) The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

## Chapter III Liability of the carrier

### Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

### Article 18

- (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any luggage or cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.
- (2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or cargo are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in case of a landing outside an aerodrome, in any place whatsoever.
- (3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

### Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or cargo to the extent of the amount of any such damage which may be proved to have been sustained by reason of such delay or of an amount representing double the sum paid for the carriage, whichever amount may be the smaller:

Provided that—

- (i) the carrier may by special contract in writing expressly exclude, increase or decrease the limit of his liability as above provided; and



- (ii) nothing in this Article shall be deemed to affect any rule of law relating to remoteness of damage.

### Article 20

The carrier is not liable if he proves that he and his servants or agents have taken all reasonable measures to avoid the damage or that it was not reasonably possible for him or them to take such measures.

### Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

### Article 22

- (1) Subject to the provisions of paragraph (4) of this Article, in the carriage of passengers the liability of the carrier in respect of injury (including injury resulting in the death of) to any passenger is limited to the sum of 250,000 francs. In a case where damages are awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 250,000 francs.
- (2) Subject to the provisions in paragraph (4) of this Article, in the carriage of luggage of which the carrier takes charge and of goods the liability of the carrier in respect of destruction, loss or damage is limited to a sum of 250 francs per kilogramme.
- (3) Subject to the provisions of paragraph (4) of this Article as regards objects of which the passenger takes charge himself the liability of the carrier in respect of destruction, loss or damage is limited to 5,000 francs per passenger.
- (4) With respect to the carriage referred to in paragraphs (1), (2) and (3) of this Article the carrier and the passenger or the carrier and the consignor, as the case may be, may by special contract in writing agree to a limit of liability higher than specified in those paragraphs.
- (5) The sums mentioned above shall be deemed to refer to the French franc consisting of 65 1/2 milligrams of gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

### Article 23

Any provision in a contract of carriage tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule, otherwise than in accordance with the provisions of this Schedule, shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

### Article 24

- (1) In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.
- (2) In the case covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to any question as to who are the persons who have the right to bring such an action and what are their respective rights.

## Article 25

- (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his willful misconduct.
- (2) Similarly, the carrier shall not be entitled to avail himself of the said provisions if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his employment, unless the carrier proves that the willful misconduct of his servant or agent took place without his actual fault or privity.

## Article 25A

- (1) If an action is brought against servant or agent of the carrier arising out of damage to which this Schedule relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.
- (2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
- (3) The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

## Article 26

- (1) Receipt by the person entitled to delivery of luggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the contract of carriage.
- (2) In the case of damage the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or cargo has been placed at his disposal.
- (3) Every complaint must be made by notice in writing despatched within the times aforesaid.
- (4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

## Article 27

In the case of the death of the person liable an action for damages lies, in accordance with the terms of this Schedule, against those legally representing his estate.

*[Please note: numbering as in original.]*

## Article 29

- (1) The right to damages shall be extinguished if an action is not brought, within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
- (2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

### Article 30

- (1) In the case of carriage to be performed by various successive carriers, each carrier who accepts passengers, luggage or cargo shall be bound by the provisions of this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
- (2) In the case, of carriage of this, nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
- (3) As regards luggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier who performed the carriage during which the destruction loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

## Chapter IV Provisions relating to combined carriage

### Article 31

- (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage the provisions of this Schedule apply only to the carriage by air.
- (2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from agreeing to special conditions relating to other modes of carriage. provided that the provisions of this Schedule are observed as regards the carriage by air.

## Chapter V General and final Provisions

### Article 32

Any provisions contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the provisions laid down by this Schedule by deciding the law to be applied shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Schedule.

### Article 33

Nothing, contained in this Schedule shall prevent the carrier either from, refusing, to enter into any contract of carriage, or from making stipulations which do not conflict with the provisions of this Schedule.

## Fifth Schedule (Section 21)

### Article I

In this Schedule—

- (a) "the Convention", means the Warsaw Convention and The Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of The Hague Protocol;

- (b) "contracting carrier" means a person who as principal makes an agreement for carriage governed by the Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, perform the whole or part of the, carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Convention. Such authority is presumed in the absence of proof to the contrary.

## Article II

If an actual carrier performs the whole or part of carriage, which according to the agreement referred to in Article I, paragraph (b), is governed by the Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Schedule, be subject to the provisions the Convention, the former for the whole of the carriage contemplated in the agreement, the later solely for the carriage which he performs.

## Article III

- (1) The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
- (2) The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject actual carrier to liability exceeding the limits specified in Article 22 of the Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Convention or any waiver of rights conferred by the Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the Convention, shall not affect the actual carrier unless agreed by him.

## Article IV

Any complaint to be made or order to be given under the Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Convention shall only be effective if addressed to the contracting carrier.

## Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Schedule to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Convention, prevents the limits of liability from being invoked.

## Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting 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 the contracting carrier or the actual carrier under this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

## Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings.

*[Please note: numbering as in original.]*

## Article IX

- (1) Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Schedule or to fix a lower limit than that which is applicable according to this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Schedule.
- (2) In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.
- (3) Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Schedule.

## Article X

Except as provided in Article VII, nothing in this Schedule shall affect the rights and obligations of the two carriers between themselves.