



ANALYSIS

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1967, No. 151

An Act to give effect to the provisions of a Convention concerning international carriage by air known as the Warsaw Convention as amended and supplemented by a subsequent Protocol and Convention, and to make provision with respect to carriage by air which is not international

[24 November 1967]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Carriage by Air Act 1967.

2. Act to bind Crown—This Act shall bind the Crown.

3. Application to Cook Islands, Niue, and the Tokelau Islands—(1) Whereas in accordance with Article 46 of the Constitution of the Cook Islands (as set out in the Second Schedule to the Cook Islands Constitution Amendment Act 1965) the Government of the Cook Islands has requested and consented to the enactment of a provision applying this Act to the Cook Islands as part of the law of the Cook Islands: Be it therefore enacted as follows:

This Act shall be in force in the Cook Islands.

(2) This Act shall be in force in Niue and the Tokelau Islands.

(3) The First Schedule to the Niue Act 1966 is hereby amended by adding the following item:

“1967 No. 151—

The Carriage by Air Act 1967 | The whole Act”

(4) In this Act, unless the context otherwise requires, every reference to New Zealand shall be deemed to include a reference to the Cook Islands, Niue, and the Tokelau Islands.

PART I

INTERNATIONAL CARRIAGE BY AIR

4. Commencement of this Part—This Part of this Act shall come into force on a date to be fixed for the commencement thereof by the Governor-General by Order in Council.

5. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Court” includes (in an arbitration allowed by the amended Convention or the Guadalajara Convention) an arbitrator:

“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 twelfth day of October, nineteen hundred and twenty-nine; and includes the Additional Protocol to that Convention:

“The amended Convention” means the Convention set out in the First Schedule to this Act, being the Warsaw Convention as amended by a Protocol opened for signature at The Hague on the twenty-eighth day of September, nineteen hundred and fifty-five:

“The Guadalajara Convention” means the Convention set out in the Second Schedule to this Act, being a 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 eighteenth day of September, nineteen hundred and sixty-one.

6. Application of Guadalajara Convention—In this Part of this Act references to the amended Convention or to any Article of that Convention include, where applicable and subject to any necessary modifications, references to that Convention or Article as supplemented by the Guadalajara Convention.

7. Conventions to have force of law—(1) The provisions of the amended Convention and the Guadalajara Convention shall, so far as they relate to the rights and liabilities of carriers, carriers’ servants and agents, passengers, consignors, consignees, and other persons, and subject to the provisions of this Part of this Act, have the force of law in New Zealand in relation to any carriage by air to which the amended Convention or the Guadalajara Convention, as the case may require, applies, irrespective of the nationality of the aircraft performing that carriage.

(2) If there is any inconsistency between the text in English of the amended Convention in Part I of the First Schedule to this Act or the text in English of the Guadalajara Convention in Part I of the Second Schedule to this Act and the corresponding text in French of those Conventions in Part II of each of those Schedules, the text in French shall prevail.

Cf. Carriage by Air Act 1961, s. 1 (1) (2) (U.K.)

8. Designation of Parties—(1) The Governor-General may, by Order in Council, from time to time certify who are the High Contracting Parties to the amended Convention and the Parties to the Guadalajara Convention, in respect of what territories they are respectively parties, and to what extent they have availed themselves of the Additional

Protocol at the end of the amended Convention as set out in the First Schedule to this Act.

(2) Paragraph (2) of Article 40A of the amended Convention shall not be read as extending references in the amended Convention to the territory of a High Contracting Party (except such as are references to the territory of any State, whether a High Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.

(3) An Order in Council under this section shall, except so far as it has been superseded by a subsequent Order, be sufficient evidence of the matters so certified.

(4) An Order in Council under this section may contain such transitional and other consequential provisions as appear to the Governor-General to be expedient.

(5) An Order in Council under this section certifying who are the High Contracting Parties to the amended Convention or the Parties to the Guadalajara Convention shall specify the date on and from which any such Party became or ceased to be a Party.

Cf. Carriage by Air Act 1961, s. 2 (U.K.)

9. Fatal accidents—References in section 4 of the Deaths by Accidents Compensation Act 1952 to a wrongful act, neglect, or default shall include references to any occurrence which gives rise to a liability under Article 17 of the amended Convention.

Cf. Carriage by Air Act 1961, s. 3 (U.K.)

10. Limitation of liability—(1) The limitations on liability referred to in Article 22 of the amended Convention shall apply whatever the nature of the proceedings by which liability may be enforced and, in particular—

- (a) Those limitations shall apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor if the tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier; and
- (b) The limitation for each passenger referred to in paragraph (1) of the said Article 22 shall apply to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of New Zealand together with any proceedings brought against him outside New Zealand.

(2) A Court before which proceedings are brought to enforce a liability which is limited by the said Article 22 may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of the said Article 22, and of any other proceedings which have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.

(3) Without prejudice to subsection (2) of this section, a Court before which proceedings are brought to enforce a liability which is limited by the said Article 22 shall, where the liability is, or may be, partly enforceable in other proceedings in New Zealand or elsewhere, have jurisdiction to award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court, or to make any part of its award conditional on the result of any other proceedings.

(4) The Minister of Finance may from time to time, by notice in the *Gazette*, specify the respective amounts which for the purposes of the said Article 22, and in particular of paragraph (5) of that Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.

(5) References in this section to the said Article 22 include, subject to any necessary modifications and as the case may require, references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention.

Cf. Carriage by Air Act 1961, s. 4 (U.K.)

11. Time for bringing proceedings—(1) No action against a carrier's servant or agent which arises out of damage to which this Part of this Act relates shall, if he was acting within the scope of his employment, be brought after more than 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) Article 29 of the amended Convention shall not be read as applying to any proceedings for contributions between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which the said Article 29 applies after the expiration of two years from the time when judgment is obtained against the person seeking to obtain the contribution.

(3) The foregoing provisions of this section and the provisions of the said Article 29 shall have effect as if references in those provisions to an action included references to an arbitration; and subsections (3) and (4) of section 29 of the Limitation Act 1950 (which determines the time at which an arbitration is deemed to have commenced) shall apply for the purposes of this subsection.

Cf. Carriage by Air Act 1961, s. 5 (U.K.)

12. Contributory negligence—For the purposes of Article 21 of the amended Convention the provisions of the Contributory Negligence Act 1947 shall be provisions of the law of New Zealand under which a Court may exonerate the carrier wholly or partly from his liability.

Cf. Carriage by Air Act 1961, s. 6 (U.K.)

13. Power to exclude aircraft in use for military purposes—

(1) The Governor-General may from time to time, by Order in Council, direct that this section shall apply, or shall cease to apply, to New Zealand or any other State specified in the Order.

(2) The amended Convention shall not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this section applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

Cf. Carriage by Air Act 1961, s. 7 (U.K.)

14. Actions against High Contracting Parties—Every High Contracting Party to the amended Convention who has not availed himself of the provisions of the Additional Protocol at the end of the amended Convention as set out in the First Schedule to this Act shall, for the purposes of any action brought in a Court in New Zealand in accordance with the provisions of Article 28 of the amended Convention or Article VIII of the Guadalajara Convention to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court, and accordingly rules of Court may provide for the manner in which any such action is to be commenced and carried on; but nothing in this section shall authorise the issue of execution against the property of any High Contracting Party.

Cf. Carriage by Air Act 1961, s. 8 (U.K.)

15. Transitional provisions—(1) This Part of this Act shall not apply so as to affect rights or liabilities arising out of an occurrence before the commencement of this Part.

(2) Where, by reason of the fact that any High Contracting Party to the Warsaw Convention is not a High Contracting Party to the amended Convention, the latter Convention is not applicable to any carriage by air, the law applicable to that carriage by air shall be the law which would have been applicable if the Carriage by Air Act 1940 had continued in force:

Provided that if the Guadalajara Convention applies to that carriage by air, the law aforesaid shall be read as including the provisions of that Convention which have the force of law in New Zealand pursuant to section 7 of this Act.

(3) For the purposes of subsection (2) of this section, section 3 of the Carriage by Air Act 1940 shall be construed as if the reference to the provisions of Article 28 of the Warsaw Convention included a reference to Article VIII of the Guadalajara Convention.

(4) For the purposes of this section the Governor-General may from time to time, by Order in Council, certify who are the High Contracting Parties to the Warsaw Convention.

16. Regulations—The Governor-General may from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for the due administration thereof.

17. Repeal and revocation—(1) The Carriage by Air Act 1962 is hereby repealed.

(2) The Carriage by Air (Parties to Convention) Order 1958 is hereby revoked.

PART II

DOMESTIC CARRIAGE BY AIR

18. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“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 contracted for by the contracting carrier; but who is not with respect to that part a successive carrier:

- “Aircraft” means any machine that can derive support in the atmosphere from the reactions of the air:
- “Air navigation service” means any service or facility provided by the Crown or an agency of the Crown for a pilot for the safe operation of an aircraft:
- “Air transport service” means any service by aircraft, whether regular or casual, for the carriage of passengers or cargo for hire or reward; but does not include any carriage of any cargo which, according to the contract between the parties, is to be released from the aircraft during flight:
- “Animal” includes any bird, reptile, amphibian, or insect:
- “Baggage” means—
- (a) Checked baggage; or
 - (b) Baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or a servant or agent of the carrier):
- “Cargo” means all kinds of movable property, including animals; but does not include baggage and mails or postal articles:
- “Carrier” includes a contracting carrier and an actual carrier:
- “Checked baggage” means baggage, personal effects or other articles checked or registered with the carrier or handed over to the carrier (whether or not a check or form of receipt is issued) as baggage intended to be carried under the contract for carriage of the passenger:
- “Contract” includes an arrangement made without consideration:
- “Contracting carrier” means a person who as a principal makes a contract for carriage with a passenger or consignor or with a person acting on behalf of the passenger or consignor; and includes a successive carrier:
- “International carriage”, in relation to carriage by air, means carriage in which, according to the contract 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 within the territories of two countries or within the territory

of a single country if there is an agreed stopping place within the territory of another country:

“Passenger” means any person carried under a contract for carriage other than a person assigned by the carrier for duty as a member of the crew of the aircraft or a person carried for the sole purpose of receiving or giving instruction in the control or navigation of aircraft in flight:

“Personal injury” means actual bodily harm; and includes mental or nervous shock:

“Successive carrier” means a person who performs part of the carriage where the carriage is performed by two or more persons in successive stages and the carriage has been regarded by the parties as a single operation, whether it has been agreed upon by a single contract or by two or more contracts.

(2) If any question arises as to whether or not an actual carrier has authority from a contracting carrier to perform any carriage, that authority shall, in the absence of proof to the contrary, be presumed.

19. Application of this Part—(1) This Part of this Act applies to any carriage by air (not being international carriage) performed by a carrier as part of an air transport service in which, according to the contract between the parties, the place of departure and the place of destination are both situated in New Zealand and there is no agreed stopping place outside New Zealand; notwithstanding that the aircraft in which the carriage takes place is at the same time engaged in international carriage and notwithstanding that the contract for the carriage of any passenger or cargo is made without consideration.

(2) For the purpose of determining whether or not any carriage is international carriage, every island in the Cook Islands, Niue, and every island in the Tokelau Islands shall be deemed part of New Zealand and any carriage between any such islands or between New Zealand (as defined in section 4 of the Acts Interpretation Act 1924) and any such island shall be deemed to be carriage within New Zealand and shall not (unless there is an agreed stopping place outside any such place) be international carriage for the purposes of this Part of this Act.

(3) Nothing in this Part of this Act shall apply to any carriage by air by an aircraft while it is being used solely for

military purposes by Her Majesty's naval, military, or air forces.

(4) Nothing in this Part of this Act shall apply to any carriage by air performed as part of an air transport service for the carriage of passengers operated by any club which is affiliated with the Royal New Zealand Aero Club (Incorporated), if the carriage is performed in an aircraft owned or hired by the club, and if all persons carried on the aircraft whether as crew or passengers, are members of the club with full rights of membership:

Provided that the provisions of this subsection shall not apply in any case where any such passenger is not carried by reason of the fact that he is a member of the club but for the purpose of carrying out a function not related to his membership.

20. Provisions where carriage performed by actual carrier—

Where the whole or any part of any carriage to which this Part of this Act applies is performed by an actual carrier,—

- (a) Both the contracting carrier and the actual carrier shall be subject to any liability imposed by this Part, the former in respect of the whole of the carriage contemplated in the contract between the contracting carrier and the passenger or consignor and the latter solely in respect of the carriage which he performs:
- (b) 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:
- (c) 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; but no such act or omission shall subject the actual carrier to liability exceeding the limits specified in section 28 of this Act:
- (d) Any special agreement under which the contracting carrier assumes obligations not imposed by this Part of this Act or any waiver of rights conferred by this Part or any special declaration of the nature and value of checked baggage or cargo contemplated by subsection (2) of section 28 of this Act shall not affect the actual carrier unless agreed to by him.

21. Provisions where carriage performed by successive carriers—Where carriage is performed or to be performed by successive carriers, the contracting carrier liable shall be,—

- (a) In the case of the death of or personal injury to a passenger or of damage to or loss of baggage other than checked baggage, the successive carrier who performed the carriage during which the occurrence giving rise to the cause of action occurred:
- (b) In the case of damage to or loss of checked baggage or cargo, all successive carriers jointly and severally (other than a successive carrier who proves that the baggage or cargo was in the charge of another successive carrier at the time of the damage or loss):
- (c) In the case of damage occasioned by delay, the successive carrier who performed or was to perform the carriage where the delay occurred.

22. Liability of the carrier for death or injury—Subject to the provisions of this Part of this Act, a carrier shall be liable for damage sustained by reason of the death of a passenger or any personal injury suffered by a passenger resulting from an accident which took place on board an aircraft or in the course of any of the operations of embarking or disembarking.

23. Liability of the carrier in respect of checked baggage or cargo—(1) A carrier shall be liable for damage sustained by reason of the destruction or loss of, or damage or injury to, any checked baggage or any cargo, if the occurrence which caused the damage took place during the period in which the checked baggage or cargo was in the charge of the carrier, whether on board an aircraft or elsewhere.

(2) In proceedings under this section, if a carrier proves that any checked baggage or cargo was, within a period of fourteen days after the arrival of the aircraft at the place to which the checked baggage or cargo was to be carried in the aircraft, available for collection by the passenger or consignee at a place at which, under the contract for carriage, the checked baggage or cargo was to be or could be made available to the passenger or consignee, the checked baggage or cargo shall not be deemed to have been in the charge of the carrier after the expiration of that period of fourteen days.

(3) Nothing in this section shall apply with respect to any baggage which is left in the custody of the carrier, in exchange for a left-baggage check or other form of receipt, pending its receipt for carriage by air or after any such carriage.

24. Liability of the carrier in respect of baggage other than checked baggage—(1) A carrier shall be liable for damage sustained by reason of the destruction or loss of, or damage or injury to, any baggage other than checked baggage, if the occurrence which caused the damage took place during the period in which the passenger was on board an aircraft or in the course of any of the operations of embarking or disembarking.

(2) In the application of section 27 of this Act to proceedings under this section, the carrier shall be deemed to have proved that the damage was caused by the negligence of the passenger, except so far as the passenger proves that he was not responsible for the damage.

25. Liability of the carrier in respect of delay—(1) Subject to subsection (2) of this section, a carrier shall be liable for damage occasioned by delay in the carriage of passengers, baggage, or cargo.

(2) A carrier shall not be liable for damage occasioned by delay if he proves that the delay arose by reason of meteorological conditions, or compliance with instructions, advice, or information given by an air navigation service, or obedience to orders or directions given by a lawful authority, or was made necessary by *force majeure* or for the purpose of saving or attempting to save life.

26. Avoidance of liability—The carrier shall not be liable under this Part of this Act if he proves that he and his servants and agents had taken all such measures as were necessary to avoid the damage or that it was not possible for him and them to have taken those measures.

27. Contributory negligence—If the carrier proves that the damage was caused by or contributed to by the negligence of the passenger, the consignor, or the consignee, the Court may, in accordance with the provisions of the Contributory Negligence Act 1947, exonerate the carrier wholly or partly from his liability.

28. Limitation of liability—(1) The liability of the carrier in respect of each passenger by reason of his injury or death, shall be limited to the sum of forty-two thousand dollars (exclusive of costs) or such higher sum as is specified in the contract of carriage.

(2) The liability of the carrier in respect of the checked baggage of any one passenger and the cargo of any one consignor or, as the case may be, of any one consignee, shall be limited to a sum of two hundred and forty dollars (exclusive of costs), unless the passenger or consignor has declared to the carrier before or at the time of acceptance for carriage the nature and value of the checked baggage or cargo and has paid any additional charges in respect thereof required by the carrier. In any such case the carrier shall be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value of the checked baggage or cargo in which case the carrier shall be liable to pay a sum equal to the actual value of the checked baggage or cargo.

(3) The liability of the carrier in respect of the baggage, other than checked baggage, of any one passenger shall be limited to the sum of two hundred and forty dollars (exclusive of costs) or such higher sum as is specified in the contract of carriage.

(4) The liability of the carrier in respect of damage occasioned by delay shall be limited to the amount of damage proved to have been sustained by reason of the delay or an amount representing ten times the sum paid for the carriage, whichever amount is the smaller:

Provided that the carrier may by special contract increase the amount of his liability under this subsection.

(5) Nothing in this Part of this Act shall be deemed to affect any rule of law relating to remoteness of damage.

(6) The provisions of this section shall apply only in respect of loss or damage occurring after the commencement of this Part.

29. Carriers to insure—(1) Every carrier shall insure against liability for any damage sustained in respect of which he is liable under section 22 of this Act for such amount as will provide adequate insurance cover in respect of any such liability.

(2) Where any aircraft has been demised, let, or hired out for a period exceeding fourteen days, and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, the carrier, for the purposes of this section, shall be the person to whom the aircraft has been demised, let, or hired out.

(3) Every carrier who operates an aircraft carrying passengers in respect of whom no insurance has been effected in accordance with this section commits an offence and shall be liable on summary conviction to a fine not exceeding two thousand dollars.

30. Contracting out—(1) Any provision in a contract of carriage or in any bylaws made by a carrier tending to relieve the carrier of liability or to fix a lower limit than the appropriate limit of liability referred to in section 28 of this Act shall be null and void, but the nullity of such a provision shall not involve the nullity of the whole contract of carriage or bylaws.

(2) Subsection (1) of this section shall not apply to provisions governing the carriage of animals, or to provisions governing loss or damage resulting from the fragile or perishable nature or inherent defect, quality, or vice, or insufficiency of package, of baggage or cargo carried.

31. Wilful or reckless misconduct—The limits of liability referred to in section 28 of this Act shall not apply if it is proved that the damage resulted from an act or omission of the carrier, or 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 an act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

32. Servants and agents of carrier—(1) If an action in respect of any damage is brought against a servant or agent of a carrier, the servant or agent, if he proves that he acted within the scope of his employment or authority, shall be entitled to avail himself of the limits of liability, if any, which the carrier himself would be entitled to invoke under section 28 of this Act in an action against him in respect of that damage.

(2) Subsection (1) of this section 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.

33. Aggregation of damages—The aggregate of the amounts recoverable from the carriers and from their servants and agents acting within the scope of their employment who are jointly and severally subject to liability under this Part of this Act shall not exceed the limits referred to in section 28 of this Act.

34. Aggregate liability—(1) The limitations referred to in section 28 of this Act shall apply to the aggregate liability of a carrier or a servant or agent of a carrier acting within the scope of his employment in all proceedings which may be brought against him under the law of New Zealand together with any proceedings brought against him outside New Zealand.

(2) Any liability imposed by this Part of this Act on a carrier or a servant or agent of the carrier shall be in substitution for any liability under any statute or at common law.

35. Just and equitable orders and awards—(1) Subject to subsections (3) and (4) of this section, a Court before which proceedings are brought to enforce a liability which is limited by this Part of this Act may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of this Part, and of any other proceedings which have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.

(2) Without prejudice to subsection (1) of this section, a Court before which proceedings are brought to enforce a liability which is limited by this Part shall, where the liability is, or may be, enforceable in other proceedings in New Zealand or elsewhere, have jurisdiction to award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court, or to make any part of its award conditional on the result of any other proceedings.

(3) If the aggregate of the amounts recoverable in respect of the death or personal injury of a passenger exceeds, or appears likely to exceed, the limitation referred to in section 28 of this Act, claims established under the Deaths by Accidents Compensation Act 1952 (in the case of death) or by the passenger (in the case of personal injury) shall have priority over any other claims.

(4) A Court before which proceedings are brought to enforce a liability which is limited by this Part of this Act may, after hearing such persons as the Court directs, approve a compromise between the carrier and any claimant under the Deaths by Accidents Compensation Act 1952 (in the case of death) or a passenger (in the case of personal injury) as to the amount of damages to which the claimant is entitled, and any compromise so approved shall be binding on all persons entitled to damages in respect of the death or injury.

(5) References in section 4 of the Deaths by Accidents Compensation Act 1952 to a wrongful act, neglect, or default shall include references to any occurrence which gives rise to a liability under section 22 of this Act.

36. Tortfeasors—(1) The limitations on liability referred to in section 28 of this Act shall apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor if the tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier.

(2) No proceedings to which subsection (1) of this section applies shall be brought by a tortfeasor to obtain a contribution from another tortfeasor after two years from the time when judgment is obtained against the tortfeasor seeking to obtain the contribution.

(3) Nothing in this Part of this Act shall affect proceedings brought against any tortfeasor other than the carrier or a servant or agent of the carrier.

37. Relationship between carriers—Nothing in this Part of this Act shall prevent a carrier from entering into special contractual arrangements with another carrier, and nothing in this Part shall affect the rights and obligations of the carriers between themselves.

38. Notice of claims—(1) For the purposes of an action under this Part of this Act, evidence proving receipt of checked baggage or cargo, without complaint, by the person entitled to delivery shall be sufficient evidence, in the absence of proof to the contrary, that the checked baggage or cargo has been delivered in good condition and in accordance with the contract of carriage.

(2) No action shall lie against a carrier under this Part of this Act in respect of baggage or cargo, except in the case of fraud on the part of the carrier or except where it is apparent from the circumstances that the carrier should have known of the damage or loss, unless the person entitled to possession, or a person acting on his behalf, has complained by writing delivered to the carrier or dispatched to the carrier by post—

- (a) In the case of the destruction or loss of, or damage or injury (including damage occasioned by delay) to baggage other than checked baggage, within seven days after the date on which the carriage of the passenger ended:
- (b) In the case of damage or injury (including damage occasioned by delay) to checked baggage or cargo, within fourteen days after the date of receipt by or on behalf of the person entitled to delivery:
- (c) In the case of the destruction or loss of checked baggage or cargo, within twenty-one days after the date on which the checked baggage or cargo should have been placed at the disposal of the person entitled to delivery or a person acting on his behalf.

(3) A Court having jurisdiction in proceedings under this Part of this Act in respect of baggage or cargo may, by order, grant leave to a person to institute or continue a proceeding in that Court in relation to baggage or cargo, notwithstanding that there has been a failure to complain in accordance with subsection (2) of this section within the time fixed by that subsection, where the Court is satisfied that it is just and equitable to do so by reason of special circumstances.

(4) Subsection (2) of this section shall not apply in relation to a proceeding in respect of which leave has been granted under subsection (3) of this section.

(5) A complaint under this section may be made to the contracting carrier or the actual carrier.

39. Limitation of actions—(1) No action shall be brought under this Part of this Act against a carrier or a servant or agent of a carrier acting within the scope of his employment after two years from the date of the arrival of the aircraft at the destination, or, where the aircraft did not arrive at the destination—

- (a) The date on which the aircraft ought to have arrived at the destination; or

(b) The date on which the carriage stopped, whichever is the later:

Provided that application may be made to the Court, after notice to the intended defendant, for leave to bring such an action at any time within six years after the date on which the cause of action accrued as aforesaid; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or mistake of any matter of law other than the provisions of this subsection or by any other reasonable cause or that the intended defendant was not materially prejudiced in his defence or otherwise by the delay.

(2) This section shall be read subject to the special provisions relating to tortfeasors contained in section 36 of this Act.

40. Combined carriage—Subject to the provisions of section 23 of this Act, where a contract of carriage made with an air carrier provides for the carriage to be performed partly by air and partly by a mode of carriage other than by air, this Part of this Act shall apply only to the carriage by air:

Provided that in respect of cargo carried under any such contract, any damage shall be presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

41. Demurrage and disposal of unclaimed baggage and cargo—(1) If any checked baggage or cargo remains, without the consent of the carrier, unclaimed by the passenger or the consignee for a longer period than twenty-one days, the carrier shall be entitled, at the cost of the passenger or consignee, to remove the baggage or cargo to premises suitable for storage and to charge for storage, for each package or unit of cargo, an amount not exceeding twenty cents a day or four dollars for the total period of storage, whichever amount is the smaller or such higher sum as the Governor-General may from time to time, by Order in Council, prescribe.

(2) If the charge referred to in subsection (1) of this section together with the cost of removal (if any) is not paid within twenty-one days after demand therefor made upon the passenger or consignee, or if the passenger or consignee cannot be found or is unknown, the carrier may, after giving notice by advertisement at least once in each of two consecutive

weeks in some newspaper having a regular circulation in the locality where the baggage or cargo is stored, sell the baggage or cargo by public auction.

(3) Where any checked baggage or cargo is sold in accordance with this section, the carrier may, out of the proceeds of the sale, reimburse himself for all charges payable under subsection (1) of this section in respect of storage together with any costs paid or payable in respect of the removal and sale of the goods, and the carrier shall, in complete discharge of his liability, pay the surplus (if any) to the passenger, the consignor, or the consignee upon application made at any time within six years after the date of the sale.

42. Disposal of perishable goods—(1) If a passenger or consignee does not take immediate delivery of perishable goods contained in checked baggage or cargo, the carrier may, in his discretion, after the expiration of forty-eight hours after arrival at the place where, under the contract of carriage, the goods were to be or could be made available to the passenger or consignee (or earlier if the goods appear to be deteriorating and likely to become offensive),—

(a) Sell the goods to the best advantage; or

(b) If sale is not reasonably practicable, destroy or otherwise dispose of the goods.

(2) If the goods are sold, payment or tender to the passenger or the consignee of the proceeds of the sale, after the deduction of all proper charges and expenses in respect of the sale, shall be a complete discharge to the carrier.

(3) If the goods are not sold, the reasonable charges of the carrier in respect of the destruction or disposal of the goods shall be payable by the passenger, consignor, or consignee, as the case may require.

43. Non-delivery of cargo—If for any reason, other than the fault of the carrier, cargo cannot be delivered to the consignee, the carrier shall be entitled to be indemnified by the consignor for all expenses resulting from the non-delivery, including any charges for the return carriage of the cargo.

44. Regulations—The Governor-General may from time to time, by Order in Council, make regulations in respect of any carriage by air to which this Part of this Act applies for all or any of the following purposes:

(a) Prescribing the duties, obligations, rights, and liabilities of carriers, passengers, consignors, and other persons

with respect to tickets, checks, waybills, and other documents relating to the carriage of passengers, baggage, and cargo:

- (b) Regulating the carriage of passengers, baggage, or cargo on aircraft, and the provisions of contracts of carriage relating thereto:
- (c) Prescribing offences against the regulations and penalties, not exceeding a fine of two hundred dollars, in respect of any such offences:
- (d) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for the due administration thereof.

45. Repeal and revocations—(1) Paragraph (b) of subsection (2) of section 52 of the Air Services Licensing Act 1951 is hereby repealed.

(2) The Carriage by Air Regulations 1954, regulations 2 and 3 of the Air Services Licensing Regulations 1952, Amendment No. 1, the Air Services Licensing Regulations 1952, Amendment No. 3, Regulation 287A of the Air Force Regulations 1952 (as inserted by the Air Force Regulations 1952, Amendment No. 1) and the said Air Force Regulations 1952, Amendment No. 1, are hereby revoked.

(3) Subsection (3) of section 144 of the Royal New Zealand Air Force Act 1950 is hereby amended by omitting the words “subject to any limitation of liability prescribed by regulations under this Act”, and substituting the words “subject to the provisions of any Act limiting the liability of any air carrier”.

(4) Any bylaws made under section 33 of the New Zealand National Airways Act 1945 and any regulations made under section 34 of that Act shall be read subject to the provisions of this Part of this Act, and, so far as any such bylaws or regulations are repugnant to or inconsistent with this Part, or regulations under this Part, they shall have no effect.

SCHEDULES

Section 5

FIRST SCHEDULE

THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT
BY THE HAGUE PROTOCOL

(Words in square brackets in both texts are words substituted for or added to the original Warsaw Convention by Chapter I of the Hague Protocol. Chapters II and III of the Hague Protocol (which affect the Warsaw Convention) are printed at the end of each text under the heading "Additional Provisions of the Hague Protocol affecting the Warsaw Convention".)

PART I

THE ENGLISH TEXT

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 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.

(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 2

(1) This 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 shall not apply to carriage of mail and postal packages.]

FIRST SCHEDULE—*continued*

CHAPTER II

DOCUMENTS OF CARRIAGE

SECTION 1—PASSENGER TICKET

Article 3

[(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 of or damage to baggage.

(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.]

SECTION 2—BAGGAGE CHECK

Article 4

[(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 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.

(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, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check

FIRST SCHEDULE—*continued*

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).]

SECTION 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 "air 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 consignor and 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 prior to the loading of the cargo on board the aircraft.]

(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 waybills when there is more than one package.

Article 8

[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.]

FIRST SCHEDULE—*continued**Article 9*

[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 avail himself of the provisions of Article 22, paragraph (2).]

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 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 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 packages, 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 air 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 waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

FIRST SCHEDULE—*continued**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 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 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.

[(3) Nothing in this Convention prevents the issue of a negotiable 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, octroi 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 enquire 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.

FIRST SCHEDULE—*continued**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 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 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

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 and 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) 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 seised 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

FIRST SCHEDULE—*continued*

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 milligrammes 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 the judgment.]

Article 23

(1) 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 provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

[(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 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 who are the persons who have the right to bring suit and what are their respective rights.

Article 25

[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.]

FIRST SCHEDULE—*continued*

[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 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 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.]

(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.

FIRST SCHEDULE—*continued*

(2) The method of calculating the period of limitation shall be determined by the law of the court seised 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 subjected 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, 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.

FIRST SCHEDULE—*continued**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

[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 35

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

Article 36

The 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 thereof.

(3) The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

FIRST SCHEDULE—*continued**Article 39*

(1) Any one of the High Contracting Parties may denounce this 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 in 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 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 or of 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 relations of which that State is responsible.]

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to 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.)

FIRST SCHEDULE—*continued*

ADDITIONAL PROTOCOL

(*With reference to Article 2*)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of 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.

Additional Provisions of the Hague Protocol Affecting the Warsaw Convention

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, the 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.

FIRST SCHEDULE—*continued**Article XXII*

1. As soon as thirty signatory States have deposited their instruments of ratification of this 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 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 2 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.

FIRST SCHEDULE—*continued**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 this 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 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:

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification 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 twenty-eighth 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 the States on behalf of which the Protocol was signed.)

FIRST SCHEDULE—*continued*

PART II

THE FRENCH TEXT

CONVENTION

POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES AU
TRANSPORT AERIEN INTERNATIONALCHAPITRE I^{er}

OBJET—DÉFINITIONS

Article 1^{er}

(1) La présente Convention s'applique à tout transport international de personnes, bagages ou marchandises, effectué par aéronef contre rémunération. Elle s'applique également aux transports gratuits effectués par aéronef par une entreprise de transports aériens.

[(2) Est qualifié *transport international*, au sens de la présente Convention, tout transport dans lequel, d'après les stipulations des parties, le point de départ et le point de destination, qu'il y ait ou non interruption de transport ou transbordement, sont situés soit sur le territoire de deux Hautes Parties Contractantes, soit sur le territoire d'une seule Haute Partie Contractante si une escale est prévue sur le territoire d'un autre Etat, même si cet Etat n'est pas une Haute Partie Contractante. Le transport sans une telle escale entre deux points du territoire d'une seule Haute Partie Contractante n'est pas considéré comme international au sens de la présente Convention.]

(3) Le transport à exécuter par plusieurs transporteurs par air successifs est censé constituer pour l'application de la présente Convention un transport unique lorsqu'il a été envisagé par les parties comme une seule opération, qu'il ait été conclu sous la forme d'un seul contrat ou d'une série de contrats, et il ne perd pas son caractère international par le fait qu'un seul contrat ou une série de contrats doivent être exécutés intégralement dans le territoire d'un même Etat.]

Article 2

(1) La Convention s'applique aux transports effectués par l'État ou les autres personnes juridiques de droit public, dans les conditions prévues à l'article 1^{er}.

[(2) La présente Convention ne s'applique pas au transport du courrier et des colis postaux.]

CHAPITRE II

TITRE DE TRANSPORT

SECTION 1—BILLET DE PASSAGE

Article 3

[(1) Dans le transport de passagers, un billet de passage doit être délivré, contenant:

- (a) l'indication des points de départ et de destination;
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales;

FIRST SCHEDULE—*continued*

- (c) un avis indiquant que si les passagers entreprennent un voyage comportant une destination finale ou une escale dans un pays autre que le pays de départ, leur transport peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de mort ou de lésion corporelle, ainsi qu'en cas de perte ou d'avarie des bagages.

(2) Le billet de passage fait foi, jusqu'à preuve contraire, de la conclusion et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si, du consentement du transporteur, le passager s'embarque sans qu'un billet de passage ait été délivré, ou si le billet ne comporte pas l'avis prescrit à l'alinéa 1 (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22.]

SECTION 2—BULLETIN DE BAGAGES

Article 4

[(1) Dans le transport de bagages enregistrés, un bulletin de bagages doit être délivré qui, s'il n'est pas combiné avec un billet de passage conforme aux dispositions de l'article 3, alinéa 1^{er}, ou n'est pas inclus dans un tel billet, doit contenir:

- (a) l'indication des points de départ et de destination;
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales;
- (c) un avis indiquant que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de perte ou d'avarie des bagages.

(2) Le bulletin de bagages fait foi, jusqu'à preuve contraire, de l'enregistrement des bagages et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du bulletin n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si le transporteur accepte la garde des bagages sans qu'un bulletin ait été délivré ou si, dans le cas où le bulletin n'est pas combiné avec un billet de passage conforme aux dispositions de l'article 3, alinéa 1 (c), ou n'est pas inclus dans un tel billet, il ne comporte pas l'avis prescrit à l'alinéa 1 (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.]

SECTION 3—LETTRE DE TRANSPORT AÉRIEN

Article 5

(1) Tout transporteur de marchandises a le droit de demander à l'expéditeur l'établissement et la remise d'un titre appelé: "lettre de transport aérien"; tout expéditeur a le droit de demander au transporteur l'acceptation de ce document.

FIRST SCHEDULE—*continued*

(2) Toutefois, l'absence, l'irrégularité ou la perte de ce titre n'affecte ni l'existence, ni la validité du contrat de transport qui n'en sera pas moins soumis aux règles de la présente Convention, sous réserve des dispositions de l'article 9.

Article 6

(1) La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux et remise avec la marchandise.

(2) Le premier exemplaire porte la mention "pour le transporteur"; il est signé par l'expéditeur. Le deuxième exemplaire porte la mention "pour le destinataire"; il est signé par l'expéditeur et le transporteur et il accompagne la marchandise. Le troisième exemplaire est signé par le transporteur et remis par lui à l'expéditeur après acceptation de la marchandise.

[(3) La signature du transporteur doit être apposée avant l'embarquement de la marchandise à bord de l'aéronef.]

(4) La signature du transporteur peut être remplacée par un timbre; celle de l'expéditeur peut être imprimée ou remplacée par un timbre.

(5) Si, à la demande de l'expéditeur, le transporteur établit la lettre de transport aérien, il est considéré jusqu'à preuve contraire, comme agissant pour le compte de l'expéditeur.

Article 7

Le transporteur de marchandises a le droit de demander à l'expéditeur l'établissement de lettres de transport aérien différentes lorsqu'il y a plusieurs colis.

Article 8

[La lettre de transport aérien doit contenir:

- (a) l'indication des points de départ et de destination;
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales;
- (c) un avis indiquant aux expéditeurs que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité des transporteurs en cas de perte ou d'avarie des marchandises.]

Article 9

[Si, du consentement du transporteur, des marchandises sont embarquées à bord de l'aéronef sans qu'une lettre de transport aérien ait été établie ou si celle-ci ne comporte pas l'avis prescrit à l'article 8, alinéa (c), le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.]

Article 10

(1) L'expéditeur est responsable de l'exactitude des indications et déclarations concernant la marchandise qu'il inscrit dans la lettre de transport aérien.

FIRST SCHEDULE—*continued*

[(2) Il supportera la responsabilité de tout dommage subi par le transporteur ou par toute autre personne à l'égard de laquelle la responsabilité du transporteur est engagée à raison de ses indications et déclarations irrégulières, inexactes ou incomplètes.]

Article 11

(1) La lettre de transport aérien fait foi, jusqu'à preuve contraire, de la conclusion du contrat, de la réception de la marchandise et des conditions du transport.

(2) Les énonciations de la lettre de transport aérien, relatives au poids, aux dimensions et à l'emballage de la marchandise ainsi qu'au nombre des colis font foi jusqu'à preuve contraire; celles relatives à la quantité, au volume et à l'état de la marchandise ne font preuve contre le transporteur qu'autant que la vérification en a été faite par lui en présence de l'expéditeur, et constatée sur la lettre de transport aérien, ou qu'il s'agit d'énonciations relatives à l'état apparent de la marchandise.

Article 12

(1) L'expéditeur a le droit, sous la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant à l'aérodrome de départ ou de destination, soit en l'arrêtant en cours de route lors d'un atterrissage, soit en la faisant délivrer au lieu de destination ou en cours de route à une personne autre que le destinataire indiqué sur la lettre de transport aérien, soit en demandant son retour à l'aérodrome de départ, pour autant que l'exercice de ce droit ne porte préjudice ni au transporteur, ni aux autres expéditeurs et avec l'obligation de rembourser les frais qui en résultent.

(2) Dans le cas où l'exécution des ordres de l'expéditeur est impossible, le transporteur doit l'en aviser immédiatement.

(3) Si le transporteur se conforme aux ordres de disposition de l'expéditeur, sans exiger la production de l'exemplaire de la lettre de transport aérien délivré à celui-ci, il sera responsable, sauf son recours contre l'expéditeur, du préjudice qui pourrait être causé par ce fait à celui qui est régulièrement en possession de la lettre de transport aérien.

(4) Le droit de l'expéditeur cesse au moment où celui du destinataire commence, conformément à l'article 13 ci-dessous. Toutefois, si le destinataire refuse la lettre de transport ou la marchandise, ou s'il ne peut être atteint, l'expéditeur reprend son droit de disposition.

Article 13

(1) Sauf dans les cas indiqués à l'article précédent, le destinataire a le droit, dès l'arrivée de la marchandise au point de destination, de demander au transporteur de lui remettre la lettre de transport aérien et de lui livrer la marchandise contre le paiement du montant des créances et contre l'exécution des conditions de transport indiquées dans la lettre de transport aérien.

(2) Sauf stipulation contraire, le transporteur doit aviser le destinataire dès l'arrivée de la marchandise.

FIRST SCHEDULE—*continued*

(3) Si la perte de la marchandise est reconnue par le transporteur ou si, à l'expiration d'un délai de sept jours après qu'elle aurait dû arriver, la marchandise n'est pas arrivée, le destinataire est autorisé à faire valoir vis-à-vis du transporteur les droits résultant du contrat de transport.

Article 14

L'expéditeur et le destinataire peuvent faire valoir tous les droits qui leur sont respectivement conférés par les articles 12 et 13, chacun en son propre nom, qu'il agisse dans son propre intérêt ou dans l'intérêt d'autrui, à condition d'exécuter les obligations que le contrat impose.

Article 15

(1) Les articles 12, 13 et 14 ne portent aucun préjudice ni aux rapports de l'expéditeur et du destinataire entre eux, ni aux rapports des tiers dont les droits proviennent, soit de l'expéditeur, soit du destinataire.

(2) Toute clause dérogeant aux stipulations des articles 12, 13 et 14 doit être inscrite dans la lettre de transport aérien.

[(3) Rien dans la présente Convention n'empêche l'établissement d'une lettre de transport aérien négociable.]

Article 16

(1) L'expéditeur est tenu de fournir les renseignements et de joindre à la lettre de transport aérien les documents qui, avant la remise de la marchandise au destinataire, sont nécessaires à l'accomplissement des formalités de douane, d'octroi ou de police. L'expéditeur est responsable envers le transporteur de tous dommages qui pourraient résulter de l'absence, de l'insuffisance ou de l'irrégularité de ces renseignements et pièces, sauf le cas de faute de la part du transporteur ou de ses préposés.

(2) Le transporteur n'est pas tenu d'examiner si ces renseignements et documents sont exacts ou suffisants.

CHAPITRE III

RESPONSABILITÉ DU TRANSPORTEUR

Article 17

Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement.

Article 18

(1) Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés ou de marchandises lorsque l'événement qui a causé le dommage s'est produit pendant le transport aérien.

(2) Le transport aérien, au sens de l'alinéa précédent, comprend la période pendant laquelle les bagages ou marchandises se trouvent sous la garde du transporteur, que ce soit dans un aéroport ou à bord d'un aéronef ou dans un lieu quelconque en cas d'atterrissage en dehors d'un aéroport.

FIRST SCHEDULE—*continued*

(3) La période du transport aérien ne couvre aucun transport terrestre, maritime ou fluvial effectué en dehors d'un aéroport. Toutefois lorsqu'un tel transport est effectué dans l'exécution du contrat de transport aérien en vue du chargement, de la livraison ou du transbordement, tout dommage est présumé, sauf preuve contraire, résulter d'un événement survenu pendant le transport aérien.

Article 19

Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de voyageurs, bagages ou marchandises.

Article 20

Le transporteur n'est pas responsable s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

Article 21

Dans le cas où le transporteur fait la preuve que la faute de la personne lésée a causé le dommage ou y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

Article 22

[(1) Dans le transport des personnes, la responsabilité du transporteur relative à chaque passager est limitée à la somme de deux cent cinquante mille francs. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois par une convention spéciale avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée.

(2) (a) Dans le transport de bagages enregistrés et de marchandises, la responsabilité du transporteur est limitée à la somme de deux cent cinquante francs par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

(b) En cas de perte, d'avarie ou de retard d'une partie des bagages enregistrés ou des marchandises, ou de tout objet qui y est contenu, seul le poids total du ou des colis dont il s'agit est pris en considération pour déterminer la limite de responsabilité du transporteur. Toutefois, lorsque la perte, l'avarie ou le retard d'une partie des bagages enregistrés ou des marchandises, ou d'un objet qui y est contenu, affecte la valeur d'autres colis couverts par le même bulletin de bagages ou la même lettre de transport aérien, le poids total de ces colis doit être pris en considération pour déterminer la limite de responsabilité.

(3) En ce qui concerne les objets dont le passager conserve la garde, la responsabilité du transporteur est limitée à cinq mille francs par passager.

(4) Les limites fixées par le présent article n'ont pas pour effet d'enlever au tribunal la faculté d'allouer en outre, conformément à sa loi, une somme correspondant à tout ou partie des dépens et autres frais

FIRST SCHEDULE—*continued*

du procès exposés par le demandeur. La disposition précédente ne s'applique pas lorsque le montant de l'indemnité allouée, non compris les dépens et autres frais de procès, ne dépasse pas la somme que le transporteur a offerte par écrit au demandeur dans un délai de six mois à dater du fait qui a causé le dommage ou avant l'introduction de l'instance si celle-ci est postérieure à ce délai.

(5) Les sommes indiquées en francs dans le présent article sont considérées comme se rapportant à une unité monétaire constituée par soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Ces sommes peuvent être converties dans chaque monnaie nationale en chiffres ronds. La conversion de ces sommes en monnaies nationales autres que la monnaie-or s'effectuera en cas d'instance judiciaire suivant la valeur-or de ces monnaies à la date du jugement.】

Article 23

(1) Toute clause tendant à exonérer le transporteur de sa responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

【(2) L'alinéa 1^{er} du présent article ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.】

Article 24

(1) Dans les cas prévus aux articles 18 et 19 toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

(2) Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs.

Article 25

【Les limites de responsabilité prévues à l'article 22 ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur ou de ses préposés fait, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résultera probablement, pour autant que, dans le cas d'un acte ou d'une omission de préposés, la preuve soit également apportée que ceux-ci ont agi dans l'exercice de leur fonctions.】

【*Article 25A*】

(1) Si une action est intentée contre un préposé du transporteur à la suite d'un dommage visé par la présente Convention, ce préposé, s'il prouve qu'il a agi dans l'exercice de ses fonctions, pourra se prévaloir des limites de responsabilité que peut invoquer ce transporteur en vertu de l'article 22.

(2) Le montant total de la réparation qui, dans ce cas, peut être obtenu du transporteur et de ses préposés ne doit pas dépasser lesdites limites.

FIRST SCHEDULE—*continued*

(3) Les dispositions des alinéas 1 et 2 du présent article ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du préposé fait, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résultera probablement.]

Article 26

(1) La réception des bagages et marchandises sans protestation par le destinataire constituera présomption, sauf preuve contraire, que les marchandises ont été livrées en bon état et conformément au titre de transport.

[(2) En cas d'avarie, le destinataire doit adresser au transporteur une protestation immédiatement après la découverte de l'avarie et, au plus tard, dans un délai de sept jours pour les bagages et de quatorze jours pour les marchandises à dater de leur réception. En cas de retard, la protestation devra être faite au plus tard dans les vingt et un jours à dater du jour où le bagage ou la marchandise auront été mis à sa disposition.]

(3) Toute protestation doit être faite par réserve inscrite sur le titre de transport ou par un autre écrit expédié dans le délai prévu pour cette protestation.

(4) A défaut de protestation dans les délais prévus, toutes actions contre le transporteur sont irrecevables, sauf le cas de fraude de celui-ci.

Article 27

En cas de décès du débiteur, l'action en responsabilité, dans les limites prévues par la présente Convention, s'exerce contre ses ayants droit.

Article 28

(1) L'action en responsabilité devra être portée, au choix du demandeur, dans le territoire d'une des Hautes Parties Contractantes, soit devant le tribunal du domicile du transporteur, du siège principal de son exploitation ou du lieu où il possède un établissement par le soin duquel le contrat a été conclu, soit devant le tribunal du lieu de destination.

(2) La procédure sera réglée par la loi du tribunal saisi.

Article 29

(1) L'action en responsabilité doit être intentée, sous peine de déchéance, dans le délai de deux ans à compter de l'arrivée à destination ou du jour où l'aéronef aurait dû arriver, ou de l'arrêt du transport.

(2) Le mode du calcul du délai est déterminé par la loi du tribunal saisi.

Article 30

(1) Dans les cas de transport régis par la définition du troisième alinéa de l'article 1^{er} à exécuter par divers transporteurs successifs, chaque transporteur acceptant des voyageurs, des bagages ou des marchandises est soumis aux règles établies par cette Convention, et est censé être une des parties contractantes du contrat de transport, pour autant que ce contrat ait trait à la partie du transport effectuée sous son contrôle.

FIRST SCHEDULE—*continued*

(2) Au cas d'un tel transport, le voyageur ou ses ayants droit ne pourront recourir que contre le transporteur ayant effectué le transport au cours duquel l'accident ou le retard s'est produit, sauf dans le cas où, par stipulation expresse, le premier transporteur aura assuré la responsabilité pour tout le voyage.

(3) S'il s'agit de bagages ou de marchandises, l'expéditeur aura recours contre le premier transporteur et le destinataire qui a le droit à la délivrance contre le dernier, et l'un et l'autre pourront, en outre, agir contre le transporteur ayant effectué le transport au cours duquel la destruction, la perte, l'avarie ou le retard se sont produits. Ces transporteurs seront solidairement responsables envers l'expéditeur et le destinataire.

CHAPITRE IV

DISPOSITIONS RELATIVES AUX TRANSPORTS COMBINÉS

Article 31

(1) Dans le cas de transports combinés effectués en partie par air et en partie par tout autre moyen de transport, les stipulations de la présente Convention ne s'appliquent qu'au transport aérien et si celui-ci répond aux conditions de l'article 1^{er}.

(2) Rien dans la présente Convention n'empêche les parties, dans le cas de transports combinés, d'insérer dans le titre de transport aérien des conditions relatives à d'autres modes de transport, à condition que les stipulations de la présente Convention soient respectées en ce qui concerne le transport par air.

CHAPITRE V

DISPOSITIONS GÉNÉRALES ET FINALES

Article 32

Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article 28, alinéa 1.

Article 33

Rien dans la présente Convention ne peut empêcher un transporteur de refuser la conclusion d'un contrat de transport ou de formuler des règlements qui ne sont pas en contradiction avec les dispositions de la présente Convention.

FIRST SCHEDULE—*continued**Article 34*

[Les dispositions des articles 3 à 9 inclus relatives aux titres de transport ne sont pas applicables au transport effectué dans des circonstances extraordinaires en dehors de toute opération normale de l'exploitation aérienne.]

Article 35

Lorsque dans la présente Convention il est question de jours, il s'agit de jours courants et non de jours ouvrables.

Article 36

La présente Convention est rédigée en français en un seul exemplaire qui restera déposé aux archives du Ministère des Affaires Etrangères de Pologne, et dont une copie certifiée conforme sera transmise par les soins du Gouvernement polonais au Gouvernement de chacune des Hautes Parties Contractantes.

Article 37

(1) La présente Convention sera ratifiée. Les instruments de ratification seront déposés aux archives du Ministère des Affaires Etrangères de Pologne, qui en notifiera le dépôt au Gouvernement de chacune des Hautes Parties Contractantes.

(2) Dès que la présente Convention aura été ratifiée par cinq des Hautes Parties Contractantes, elle entrera en vigueur entre Elles le quatre-vingt-dixième jour après le dépôt de la cinquième ratification. Ultérieurement elle entrera en vigueur entre les Hautes Parties Contractantes qui l'auront ratifiée et la Haute Partie Contractante qui déposera son instrument de ratification le quatre-vingt-dixième jour après son dépôt.

(3) Il appartiendra au Gouvernement de la République de Pologne de notifier au Gouvernement de chacune des Hautes Parties Contractantes la date de l'entrée en vigueur de la présente Convention ainsi que la date du dépôt de chaque ratification.

Article 38

(1) La présente Convention, après son entrée en vigueur, restera ouverte à l'adhésion de tous les Etats.

(2) L'adhésion sera effectuée par une notification adressée au Gouvernement de la République de Pologne, qui en fera part au Gouvernement de chacune des Hautes Parties Contractantes.

(3) L'adhésion produira ses effets à partir du quatre-vingt-dixième jour après la notification faite au Gouvernement de la République de Pologne.

Article 39

(1) Chacune des Hautes Parties Contractantes pourra dénoncer la présente Convention par une notification faite au Gouvernement de la République de Pologne, qui en avisera immédiatement le Gouvernement de chacune des Hautes Parties Contractantes.

(2) La dénonciation produira ses effets six mois après la notification de la dénonciation et seulement à l'égard de la Partie qui y aura procédé.

FIRST SCHEDULE—*continued**Article 40*

(1) Les Hautes Parties Contractantes pourront, au moment de la signature, du dépôt des ratifications, ou de leur adhésion, déclarer que l'acceptation qu'Elles donnent à la présente Convention ne s'applique pas à tout ou partie des leurs colonies, protectorats, territoires sous mandat, ou tout autre territoire soumis à leur souveraineté ou à leur autorité, ou à tout autre territoire sous suzeraineté.

(2) En conséquence, Elles pourront ultérieurement adhérer séparément au nom de tout ou partie de leurs colonies, protectorats, territoires sous mandat, ou tout autre territoire soumis à leur souveraineté ou à leur autorité, ou tout territoire sous suzeraineté ainsi exclus de leur déclaration originelle.

(3) Elles pourront aussi, en se conformant à ses dispositions, dénoncer la présente Convention séparément ou pour tout ou partie de leurs colonies, protectorats, territoires sous mandat, ou tout autre territoire soumis à leur souveraineté ou à leur autorité, ou tout autre territoire sous suzeraineté.

[*Article 40A*]

(1) A l'article 37, alinéa 2, et à l'article 40, alinéa 1^{er}, l'expression *Haute Partie Contractante* signifie *Etat*. Dans tous les autres cas, l'expression *Haute Partie Contractante* signifie un Etat dont la ratification ou l'adhésion à la Convention a pris effet et dont la dénonciation n'a pas pris effet.

(2) Aux fins de la Convention, le mot *territoire* signifie non seulement le territoire métropolitain d'un Etat, mais aussi tous les territoires qu'il représente dans les relations extérieures.]

Article 41

Chacune des Hautes Parties Contractantes aura la faculté au plus tôt deux ans après la mise en vigueur de la présente Convention de provoquer la réunion d'une nouvelle Conférence internationale dans le but de rechercher les améliorations qui pourraient être apportées à la présente Convention. Elle s'adressera dans ce but au Gouvernement de la République Française qui prendra les mesures nécessaires pour préparer cette Conférence.

(*Here follow signatures.*)

PROTOCOLE ADDITIONNEL

Ad Article 2

Les Hautes Parties Contractantes se réservent le droit de déclarer au moment de la ratification ou de l'adhésion que l'article 2, alinéa premier, de la présente Convention ne s'appliquera pas aux transports internationaux aériens effectués directement par l'Etat, ses colonies, protectorats, territoires sous mandat ou tout autre territoire sous sa souveraineté, sa suzeraineté ou son autorité.

FIRST SCHEDULE—*continued**Additional Provisions of the Hague Protocol Affecting the Warsaw Convention*

CHAPITRE II

CHAMP D'APPLICATION DE LA CONVENTION AMENDÉE

Article XVIII

La Convention amendée par le présent protocole s'applique au transport international défini à l'article premier de la Convention lorsque les points de départ et de destination sont situés soit sur le territoire de deux Etats parties au présent protocole, soit sur le territoire d'un seul Etat partie au présent protocole si une escale est prévue dans le territoire d'un autre Etat.

CHAPITRE III

DISPOSITIONS PROTOCOLAIRES

Article XIX

Entre les Parties au présent Protocole, la Convention et le Protocole seront considérés et interprétés comme un seul et même instrument et seront dénommés *Convention de Varsovie amendée à la Haye en 1955*.

Article XX

Jusqu'à sa date d'entrée en vigueur conformément aux dispositions de l'article XXII, alinéa 1^{er}, le présent Protocole restera ouvert à la signature à tout Etat qui aura ratifié la Convention ou y aura adhéré, ainsi qu'à tout Etat ayant participé à la Conférence à laquelle ce Protocole a été adopté.

Article XXI

1. Le présent Protocole sera soumis à la ratification des Etats signataires.
2. La ratification du présent Protocole par un Etat qui n'est pas partie à la Convention emporte adhésion à la Convention amendée par ce Protocole.
3. Les instruments de ratification seront déposés auprès du Gouvernement de la République Populaire de Pologne.

Article XXII

1. Lorsque le présent Protocole aura réuni les ratifications de trente Etats signataires, il entrera en vigueur entre ces Etats le quatre-vingt-dixième jour après le dépôt du trentième instrument de ratification. A l'égard de chaque Etat qui le ratifiera par la suite, il entrera en vigueur le quatre-vingt dixième jour après de dépôt de son instrument de ratification.

2. Des son entrée en vigueur, le présent Protocole sera enregistré auprès de l'Organisation des Nations Unies par le Gouvernement de la République Populaire de Pologne.

FIRST SCHEDULE—*continued**Article XXIII*

1. Après son entrée en vigueur, le présent Protocole sera ouvert à l'adhésion de tout Etat non signataire.

2. L'adhésion au présent Protocole par un Etat qui n'est pas partie à la Convention emporte adhésion à la Convention amendée par le présent Protocole.

3. L'adhésion sera effectuée par le dépôt d'un instrument d'adhésion auprès du Gouvernement de la République Populaire de Pologne et produira ses effets le quatre-vingt-dixième jour après ce dépôt.

Article XXIV

1. Toute Partie au présent Protocole pourra le dénoncer par une notification faite au Gouvernement de la République Populaire de Pologne.

2. La dénonciation produira ses effets six mois après la date de réception par le Gouvernement de la République Populaire de Pologne de la notification de dénonciation.

3. Entre les parties au présent Protocole, la dénonciation de la Convention par l'une d'elles en vertu de l'article 39 ne doit pas être interprétée comme une dénonciation de la Convention amendée par le présent Protocole.

Article XXV

1. Le présent Protocole s'appliquera à tous les territoires qu'un Etat partie à ce Protocole représente dans les relations extérieures, à l'exception des territoires à l'égard desquels une déclaration a été faite conformément à l'alinéa 2 du présent article.

2. Tout Etat pourra, au moment du dépôt de son instrument de ratification ou d'adhésion, déclarer que son acceptation du présent Protocole ne vise pas un ou plusieurs des territoires qu'il représente dans les relations extérieures.

3. Tout Etat pourra par la suite notifier au Gouvernement de la République Populaire de Pologne que le présent Protocole s'appliquera à un ou plusieurs des territoires ayant fait l'objet de la déclaration prévue à l'alinéa 2 du présent article. Cette notification produira ses effets le quatre-vingt-dixième jour après la date de sa réception par ce Gouvernement.

4. Tout Etat partie à ce Protocole pourra, conformément aux dispositions de l'article XXIV, alinéa 1^{er}, dénoncer le présent Protocole séparément pour tous ou pour l'un quelconque des territoires qu'il représente dans les relations extérieures.

Article XXVI

Il ne sera admis aucune réserve au présent Protocole. Toutefois, un Etat pourra à tout moment déclarer par notification faite au Gouvernement de la République Populaire de Pologne que la Convention amendée par le présent Protocole ne s'appliquera pas au transport de personnes, de marchandises et de bagages effectué pour ses autorités militaires à bord d'aéronefs immatriculés dans ledit Etat et dont la capacité entière a été réservée par ces autorités ou pour le compte de celles-ci.

FIRST SCHEDULE—*continued**Article XXVII*

Le Gouvernement de la République Populaire de Pologne notifiera immédiatement aux Gouvernements de tous les Etats signataires de la Convention ou du présent Protocole, de tous les Etats parties à la Convention ou au présent Protocole, et de tous les Etats membres de l'Organisation de l'Aviation civile internationale ou de l'Organisation des Nations Unies, ainsi qu'à l'Organisation de l'Aviation civile internationale:

- (a) toute signature du présent Protocole et la date de cette signature;
- (b) le dépôt de tout instrument de ratification du présent Protocole ou d'adhésion à ce dernier et la date de ce dépôt;
- (c) la date à laquelle le présent Protocole entre en vigueur conformément à l'alinéa 1^{er} de l'article XXII;
- (d) la réception de toute notification de dénonciation et la date de réception;
- (e) la réception de toute déclaration ou notification faite en vertu de l'article XXV et la date de réception; et
- (f) la réception de toute notification faite en vertu de l'article XXVI et la date de réception.

EN FOI DE QUOI les Plénipotentiaires soussignés, dûment autorisés, ont signé le présent Protocole.

FAIT à la Haye le vingt-huitième jour du mois de septembre de l'année mil neuf cent cinquante-cinq, en trois textes authentiques rédigés dans les langues française, anglaise et espagnole. En cas de divergence, le texte en langue française, langue dans laquelle la Convention avait été rédigée, fera foi.

Le présent Protocole sera déposé auprès du Gouvernement de la République Populaire de Pologne où, conformément aux dispositions de l'article XX, il restera ouvert à la signature, et ce Gouvernement transmettra des copies certifiées du présent Protocole aux Gouvernements de tous les Etats signataires de la Convention ou du présent Protocole, de tous les Etats parties à la Convention ou au présent Protocole et de tous les Etats membres de l'Organisation de l'Aviation civile internationale ou de l'Organisation des Nations Unies, ainsi qu'à l'Organisation de l'Aviation civile internationale.

(Here follow signatures.)

Section 5

SECOND SCHEDULE

THE GUADALAJARA CONVENTION

PART I

THE ENGLISH TEXT

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 12 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 I, 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.

SECOND SCHEDULE—*continued**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 the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. 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 are 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 seised of the case.

SECOND SCHEDULE—*continued**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 XIII, 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.

SECOND SCHEDULE—*continued*

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 or 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 or notification made under Article XVI and the date thereof.

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

SECOND SCHEDULE—*continued*

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 case 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 signatures.)

PART II

THE FRENCH TEXT

CONVENTION,

COMPLEMENTAIRE A LA CONVENTION DE VARSOVIE, POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES AU TRANSPORT AERIEN INTERNATIONAL EFFECTUE PAR UNE PERSONNE AUTRE QUE LE TRANSPORTEUR CONTRACTUEL.

LES ETATS SIGNATAIRES DE LA PRESENTE CONVENTION

CONSIDERANT que la Convention de Varsovie ne contient pas de disposition particulière relative au transport aérien international effectué par une personne qui n'est pas partie au contrat de transport

CONSIDERANT qu'il est donc souhaitable de formuler des règles applicables à cette situation

SONT CONVENUS DE CE QUI SUIT:

Article Premier

Dans la présente Convention

- (a) "Convention de Varsovie" signifie soit la Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Varsovie le 12 octobre 1929, soit la Convention de Varsovie, amendée à la Haye en 1955, selon que le transport, aux termes du contrat visé à l'alinéa (b), est régi par l'une ou par l'autre;
- (b) "transporteur contractuel" signifie une personne partie à un contrat de transport régi par la Convention de Varsovie et conclu avec un passager ou un expéditeur ou avec une personne agissant pour le compte du passager ou de l'expéditeur;
- (c) "transporteur de fait" signifie une personne, autre que le transporteur contractuel, qui, en vertu d'une autorisation donnée par le transporteur contractuel, effectue tout ou partie du transport prévu à l'alinéa (b) mais n'est pas, en ce qui concerne cette partie, un transporteur successif au sens de la Convention de Varsovie. Cette autorisation est présumée, sauf preuve contraire.

SECOND SCHEDULE—*continued**Article II*

Sauf disposition contraire de la présente Convention, si un transporteur de fait effectue tout ou partie du transport qui, conformément au contrat visé à l'article premier, alinéa (b), est régi par la Convention de Varsovie, le transporteur contractuel et le transporteur de fait sont soumis aux règles de la Convention de Varsovie, le premier pour la totalité du transport envisagé dans le contrat, le second seulement pour le transport qu'il effectue.

Article III

1. Les actes et omissions du transporteur de fait ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur contractuel.

2. Les actes et omissions du transporteur contractuel ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur de fait. Toutefois, aucun de ces actes ou omissions ne pourra soumettre le transporteur de fait à une responsabilité dépassant les limites prévues à l'article 22 de la Convention de Varsovie. Aucun accord spécial aux termes duquel le transporteur contractuel assume des obligations que n'impose pas la Convention de Varsovie, aucune renonciation à des droits prévus par ladite Convention ou aucune déclaration spéciale d'intérêt à la livraison, visée à l'article 22 de ladite Convention, n'auront d'effet à l'égard du transporteur de fait, sauf consentement de ce dernier.

Article IV

Les ordres ou protestations à notifier au transporteur, en application de la Convention de Varsovie, ont le même effet qu'ils soient adressés au transporteur contractuel ou au transporteur de fait. Toutefois, les ordres visés à l'article 12 de la Convention de Varsovie n'ont d'effet que s'ils sont adressés au transporteur contractuel.

Article V

En ce qui concerne le transport effectué par le transporteur de fait, tout préposé de ce transporteur ou du transporteur contractuel, s'il prouve qu'il a agi dans l'exercice de ses fonctions, peut se prévaloir des limites de responsabilité applicables, en vertu de la présente Convention, au transporteur dont il est le préposé, sauf s'il est prouvé qu'il a agi de telle façon que les limites de responsabilité ne puissent être invoquées aux termes de la Convention de Varsovie.

Article VI

En ce qui concerne le transport effectué par le transporteur de fait, le montant total de la réparation qui peut être obtenu de ce transporteur, du transporteur contractuel et de leurs préposés quand ils ont agi dans l'exercice de leurs fonctions, ne peut pas dépasser l'indemnité la plus élevée qui peut être mise à charge soit du transporteur contractuel, soit du transporteur de fait, en vertu de la présente Convention, sous réserve qu'aucune des personnes mentionnées dans le présent article ne puisse être tenue pour responsable au delà de la limite qui lui est applicable.

SECOND SCHEDULE—*continued**Article VII*

Toute action en responsabilité, relative au transport effectué par le transporteur de fait, peut être intentée, au choix du demandeur, contre ce transporteur ou le transporteur contractuel ou contre l'un et l'autre, conjointement ou séparément. Si l'action est intentée contre l'un seulement de ces transporteurs, ledit transporteur aura le droit d'appeler l'autre transporteur en intervention devant le tribunal saisi, les effets de cette intervention ainsi que la procédure qui lui est applicable étant réglés par la loi de ce tribunal.

Article VIII

Toute action en responsabilité, prévue à l'article VII de la présente Convention, doit être portée, au choix du demandeur, soit devant l'un des tribunaux où une action peut être intentée au transporteur contractuel, conformément à l'article 28 de la Convention de Varsovie, soit devant le tribunal du domicile du transporteur de fait ou du siège principal de son exploitation.

Article IX

1. Toute clause tendant à exonérer le transporteur contractuel ou le transporteur de fait de leur responsabilité en vertu de la présente Convention ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

2. En ce qui concerne le transport effectué par le transporteur de fait, le paragraphe précédent ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.

3. Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article VIII.

Article X

Sous réserve de l'article VII, aucune disposition de la présente Convention ne peut être interprétée comme affectant les droits et obligations existant entre les deux transporteurs.

Article XI

La présente Convention, jusqu'à la date de son entrée en vigueur dans les conditions prévues à l'article XIII, est ouverte à la signature de tout Etat qui, à cette date, sera membre de l'Organisation des Nations Unies ou d'une Institution spécialisée.

Article XII

1. La présente Convention est soumise à la ratification des Etats signataires.

2. Les instruments de ratification seront déposés auprès du Gouvernement des Etats-Unis du Mexique.

SECOND SCHEDULE—*continued**Article XIII*

1. Lorsque la présente Convention aura réuni les ratifications de cinq Etats signataires, elle entrera en vigueur entre ces Etats le quatre-vingt-dixième jour après le dépôt du cinquième instrument de ratification. A l'égard de chaque Etat qui la ratifiera par la suite, elle entrera en vigueur le quatre-vingt-dixième jour après le dépôt de son instrument de ratification.

2. Dès son entrée en vigueur, la présente Convention sera enregistrée auprès de l'Organisation des Nations Unies et de l'Organisation de l'Aviation civile internationale par le Gouvernement des Etats-Unis du Mexique.

Article XIV

1. La présente Convention sera ouverte après son entrée en vigueur, à l'adhésion de tout Etat membre de l'Organisation des Nations Unies ou d'une Institution spécialisée.

2. Cette adhésion sera effectuée par le dépôt d'un instrument d'adhésion auprès du Gouvernement des Etats-Unis du Mexique et prendra effet le quatre-vingt-dixième jour qui suivra la date de ce dépôt.

Article XV

1. Tout Etat contractant peut dénoncer la présente Convention par une notification faite au Gouvernement des Etats-Unis du Mexique.

2. Cette dénonciation prendra effet six mois après la date de réception de la notification par le Gouvernement des Etats-Unis du Mexique.

Article XVI

1. Tout Etat contractant peut, lors de la ratification de la présente Convention ou de l'adhésion à celle-ci ou ultérieurement, déclarer au moyen d'une notification adressée au Gouvernement des Etats-Unis du Mexique que la présente Convention s'étendra à l'un quelconque des territoires qu'il représente dans les relations extérieures.

2. Quatre-vingt-dix jours après la date de réception de ladite notification par le Gouvernement des Etats-Unis du Mexique, la présente Convention s'étendra aux territoires visés par la notification.

3. Tout Etat contractant peut, conformément aux dispositions de l'article XV, dénoncer la présente Convention séparément, pour tous au pour l'un quelconque des territoires que cet Etat représente dans les relations extérieures.

Article XVII

Il ne sera admis aucune réserve à la présente Convention.

Article XVIII

Le Gouvernement des Etats-Unis du Mexique notifiera à l'Organisation de l'Aviation civile internationale et à tous les Etats membres de l'Organisation des Nations Unies ou d'une Institution spécialisée:

- (a) toute signature de la présente Convention et la date de cette signature;
- (b) le dépôt de tout instrument de ratification ou d'adhésion et la date de ce dépôt;

SECOND SCHEDULE—*continued*

- (c) la date à laquelle la présente Convention entre en vigueur conformément au premier paragraphe de l'article XIII;
- (d) la réception de toute notification de dénonciation et la date de réception;
- (e) la réception de toute déclaration ou notification faite en vertu de l'article XVI et la date de réception.

EN FOI DE QUOI les Plénipotentiaires soussignés, dûment autorisés, ont signé la présente Convention.

FAIT à Guadalajara, le dix huitième jour du mois de septembre de l'an mil neuf cent soixante et un en trois textes authentiques rédigés dans les langues française, anglaise et espagnole. En cas de divergence, le texte en langue française, langue dans laquelle la Convention de Varsovie du 12 octobre 1929 avait été rédigée, fera foi. Le Gouvernement des Etats-Unis du Mexique établira une traduction officielle du texte de la Convention en langue russe.

La présente Convention sera déposée auprès du Gouvernement des Etats-Unis du Mexique où, conformément aux dispositions de l'article XI, elle restera ouverte à la signature et ce Gouvernement transmettra des copies certifiées conformes de la présente Convention à l'Organisation de l'Aviation civile internationale et à tous les Etats membres de l'Organisation des Nations Unies ou d'une Institution spécialisée.

(Here follow signatures.)

This Act is administered by the Department of Civil Aviation.
