

*Draft Order in Council laid before Parliament under section 8A of the Carriage by Air Act 1961, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**1999 No.**

**CIVIL AVIATION**

**The Carriage by Air Acts (Implementation of  
Protocol No. 4 of Montreal, 1975) Order 1999**

*Made* - - - - 1999  
*Coming into force* - - 1999

At the Court at [ ], the [ ] day of [ ] 1999

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament, in accordance with section 8A of the Carriage by Air Act 1961(1);

Whereas it appears to Her Majesty in Council that Her Majesty's Government in the United Kingdom has agreed to a revision of the Warsaw Convention as amended at The Hague, 1955;

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 8A of the Carriage by Air Act 1961, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation, commencement and effect**

1.—(1) This Order may be cited as the Carriage by Air Acts (Implementation of Protocol No. 4 of Montreal, 1975) Order 1999 and shall come into force on the tenth day after the day on which it is made.

(2) Nothing in this Order shall affect rights and liabilities arising out of an occurrence which took place before the coming into force of this Order.

**Amendments of the Carriage by Air Act 1961**

2.—(1) The Carriage by Air Act 1961 shall be amended as follows.

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(1) 1961 c. 27. Section 8A was inserted by section 3(1) of the Carriage by Air and Road Act 1979 (c. 28) which came into force on 22nd October 1998 under S.I.1998/2562.

(2) For section 1 there shall be substituted the following section—

**“1 Convention to have the force of law**

(1) Subject to this section—

- (a) the provisions of the Convention known as “the Warsaw Convention as amended at the Hague, 1955” as set out in Schedule 1 to this Act (“the Convention”); and
- (b) the provisions of that Convention as further amended by Protocol No. 4 of Montreal, 1975 and as set out in Schedule 1A to this Act (“the Convention as amended”),

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 Act, have the force of law in the United Kingdom in relation to any carriage by air to which they apply, irrespective of the nationality of the aircraft performing that carriage.

(2) In relation to Community air carriers—

- (a) in respect of damages up to the equivalent in euros of 100,000 Special Drawing Rights arising from the death, wounding or other bodily injury suffered by a passenger, the provisions of Article 20 of the Convention or the Convention as amended; and
- (b) in respect of damages arising from the death, wounding or other bodily injury suffered by a passenger, the provisions of Articles 21 and 22(1) of that Convention,

do not have the force of law in the United Kingdom.

(3) If there is any inconsistency between the text in English in Part I of Schedule 1 or 1A to this Act and the text in French in Part II of that Schedule, the French text shall prevail.”

(3) In section 2(1)—

- (a) after the words “High Contracting Parties to the Convention” there shall be inserted the words “or the Convention as amended”; and
- (b) for the words “the Convention as set out in the First Schedule” there shall be substituted the words “that Convention as set out in Schedule 1 or 1A”.

(4) In sections 2(2), 3, 4(1), 4A(2)(2), 5(2), 6, 7(2), 10(1) and 11(b) for the words “the First Schedule” there shall be substituted the words “Schedule 1 or 1A”.

(5) In sections 5(1) and (2) and 10(1) after the words “the Convention” there shall be inserted the words “or the Convention as amended”.

(6) After Schedule 1 there shall be inserted, as Schedule 1A, the provisions set out in the Schedule to this Order.

**Amendments of the Carriage by Air (Supplementary Provisions) Act 1962**

3.—(1) The Carriage by Air (Supplementary Provisions) Act 1962(3) shall be amended as follows.

(2) In section 2(1)(b) for the words “the Convention as set out in the First Schedule” there shall be substituted the words “whichever is applicable to the carriage in question of the Conventions set out in Schedules 1 and 1A”.

(3) In section 3(1) and (3) for the words “the First Schedule” there shall be substituted the words “Schedule 1 or 1A”.

(4) In section 5(2)—

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(2) Section 4A(2) was inserted by section 2(1) of the Carriage by Air and Road Act 1979.

(3) 1962 c. 43.

- (a) for the words “the First Schedule” there shall be substituted the words “Schedules 1 and 1A”; and
- (b) for the words “the Convention set out in that Schedule” there shall be substituted the words “the Conventions set out in those Schedules”.

Clerk of the Privy Council

SCHEDULE

Provisions inserted, as Schedule 1A, in the Carriage by Air Act 1961

“SCHEDULE 1A

THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT BY  
THE HAGUE PROTOCOL AND PROTOCOL NO. 4 OF MONTREAL, 1975

**PART 1**

**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 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) In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

(3) Except as provided in paragraph (2) of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

**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 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 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—DOCUMENTATION RELATING TO CARGO**

#### ***Article 5***

(1) In respect of the carriage of cargo an air waybill shall be delivered.

(2) Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

(3) The impossibility of using, at points of transit and destination, the other means which would preserve a record of the carriage referred to in paragraph (2) of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

#### ***Article 6***

(1) The air waybill shall be made out by the consignor in three original parts.

(2) The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The signature of the carrier and that of the consignor may be printed or stamped.

(4) 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***

Where there is more than one package:

- (a) the carrier of the cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph (2) of Article 5 are used.

#### ***Article 8***

The air waybill and receipt for the cargo 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; and
- (c) an indication of the weight of the consignment.

#### ***Article 9***

Non-compliance with the provisions of Articles 5 to 8 shall 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 including those relating to limitation of liability.

#### **Article 10**

(1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph (2) of Article 5.

(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 or on his behalf.

(3) Subject to the provisions of paragraphs (1) and (2) of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph (2) of Article 5.

#### **Article 11**

(1) The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

(2) Any statements in the air waybill or the receipt for the cargo 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 airport 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 originally designated, or by requiring it to be returned to the airport 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 or the receipt for the cargo 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 or the receipt for the cargo.

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

#### **Article 13**

(1) Except when the consignor has exercised his right under Article 12, the consignee is entitled, on the arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce 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 of carriage.

#### ***Article 15***

(1) Articles 12, 13 and 14 do not affect the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo.

#### ***Article 16***

(1) The consignor must furnish such information and 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, 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.

#### ***Article 18***

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

(3) However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

- (a) inherent defect, quality or vice of that cargo;



- (b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
- (c) an act of war or an armed conflict;
- (d) an act of a public authority carried out in connection with the entry, exit or transit of the cargo.

(4) The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(5) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

#### ***Article 19***

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

#### ***Article 20***

In the case of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be 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 them to take such measures.

#### ***Article 21***

(1) In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

(2) In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

#### ***Article 22***

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16,600 Special Drawing Rights. 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 this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

- (a) (2) In the carriage of registered baggage, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the same time when the package was handed over to the carrier, a special declaration or 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 the consignor's actual interest in delivery at destination.

- (b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the same 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 consignor's actual interest in delivery at destination.
  - (c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
- (3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights 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 terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of judgment.
- (6) The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph (2)(b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into national currency shall be made according to the law of the State concerned.

### **Article 23**

- (1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that 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 carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

(2) In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which give rise to the liability.

#### **Article 25**

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

#### **Article 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 able to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants or agents, in that case, shall not exceed the said limits.

(3) In the carriage of passengers and baggage, 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 have 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 has been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

#### **Article 27**

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

**Article 28**

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

(2) Questions of procedure shall be governed by the law of the court seised of the case.

**Article 29**

(1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

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

**Article 30A**

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

**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 carriage by air falls within the terms of Article 1.

(2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## CHAPTER V GENERAL AND FINAL PROVISIONS

### *Article 32*

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

### *Article 33*

Except as provided in paragraph (3) of Article 5, nothing 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 8 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 of 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 40A*

(1) [*This paragraph is not reproduced. It defines "High Contracting Party".*]

(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.

## 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 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) In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

(3) Except as provided in paragraph (2) of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

## **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 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 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—DOCUMENTATION RELATING TO CARGO**

#### ***Article 5***

(1) In respect of the carriage of cargo an air waybill shall be delivered.

(2) Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

(3) The impossibility of using, at points of transit and destination, the other means which would preserve a record of the carriage referred to in paragraph (2) of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

#### ***Article 6***

(1) The air waybill shall be made out by the consignor in three original parts.

(2) The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The signature of the carrier and that of the consignor may be printed or stamped.

(4) 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***

Where there is more than one package:

- (a) the carrier of the cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph (2) of Article 5 are used.

### **Article 8**

The air waybill and receipt for the cargo 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; and
- (c) an indication of the weight of the consignment.

### **Article 9**

Non-compliance with the provisions of Articles 5 to 8 shall 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 including those relating to limitation of liability.

### **Article 10**

(1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph (2) of Article 5.

(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 or on his behalf.

(3) Subject to the provisions of paragraphs (1) and (2) of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph (2) of Article 5.

### **Article 11**

(1) The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

(2) Any statements in the air waybill or the receipt for the cargo 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 airport 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 originally designated, or by requiring it to be returned to the airport 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 or the receipt for the cargo 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 or the receipt for the cargo.

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

#### **Article 13**

(1) Except when the consignor has exercised his right under Article 12, the consignee is entitled, on the arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce 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 of carriage.

#### **Article 15**

(1) Articles 12, 13 and 14 do not affect the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo.

#### **Article 16**

(1) The consignor must furnish such information and 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, 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.

### **Article 18**

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

(3) However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
- (c) an act of war or an armed conflict;
- (d) an act of a public authority carried out in connection with the entry, exit or transit of the cargo.

(4) The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(5) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

### **Article 19**

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

### **Article 20**

In the case of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be 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 them to take such measures.

### **Article 21**

(1) In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

(2) In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

### **Article 22**

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16,600 Special Drawing Rights. 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 this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

- (a) (2) In the carriage of registered baggage, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the same time when the package was handed over to the carrier, a special declaration or 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 the consignor's actual interest in delivery at destination.
- (b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the same 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 consignor's actual interest in delivery at destination.
- (c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights 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 terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of judgment.

(6) The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph (2)(b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into national currency shall be made according to the law of the State concerned.

#### **Article 23**

(1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that 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 carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

(2) In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which give rise to the liability.

#### **Article 25**

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

#### **Article 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 able to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants or agents, in that case, shall not exceed the said limits.

(3) In the carriage of passengers and baggage, 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 have 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 has been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

#### ***Article 27***

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

#### ***Article 28***

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

(2) Questions of procedure shall be governed by the law of the court seized of the case.

#### ***Article 29***

(1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court seized of the case.

#### ***Article 30***

(1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is 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.

#### ***Article 30A***

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

## **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 carriage by air falls within the terms of Article 1.

(2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## **CHAPTER V GENERAL AND FINAL PROVISIONS**

### *Article 32*

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

### *Article 33*

Except as provided in paragraph (3) of Article 5, nothing 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 8 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 of 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 40A*

(1) [*This paragraph is not reproduced. It defines "High Contracting Party".*]

(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.

[Articles 37, 38, 39, 40 and 41 and the concluding words of the Convention are not reproduced. They deal with the coming into force of the Convention.]

## **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.

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.

## **PART II**

### **THE FRENCH TEXT CONVENTION POUR L'UNIFICATION DE CERTAINES RÉGLES RELATIVES AU TRANSPORT AÉRIEN INTERNATIONAL**

#### **CHAPITRE 1er**

#### **OBJET—DEFINITIONS**

##### *Article 1er*

(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 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'Etat ou les autres personnes juridiques de droit public, dans les conditions prévues à l'article 1er.

(2) Dans le transport des envois postaux, le transporteur n'est responsable qu'envers l'administration postale compétente conformément aux règles applicables dans les rapports entre les transporteurs et les administrations postales.

(3) Les dispositions de la présente Convention autres que celles de l'alinéa 2 ci-dessus ne s'appliquent pas au transport des envois postaux.

## **CHAPITRE II**

### **TITRE DE TRANSPORT**

#### **SECTION I—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;
- (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 I (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22.

#### **SECTION II—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 1er, 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 I (c), ou n'est pas inclus dans un tel billet, il ne comporte pas l'avis prescrit à l'alinéa I (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.



### SECTION III.—DOCUMENTATION RELATIVE AUX MARCHANDISES

#### *Article 5*

1. Pour le transport de marchandises une lettre de transport aérien est émise.
2. L'emploi de tout autre moyen constatant les indications relatives au transport à exécuter peut, avec le consentement de l'expéditeur, se substituer à l'émission de la lettre de transport aérien. Si de tels autres moyens sont utilisés, le transporteur délivre à l'expéditeur, à la demande de ce dernier, un récépissé de la marchandise permettant l'identification de l'expédition et l'accès aux indications enregistrées par ces autres moyens.
3. L'impossibilité d'utiliser, aux points de transit et de destination, les autres moyens permettant de constater les indications relatives au transport, visés à l'alinéa 2 ci-dessus, n'autorise pas le transporteur à refuser l'acceptation des marchandises en vue du transport.

#### *Article 6*

1. La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux.
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. 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 et celle de l'expéditeur peuvent être imprimées ou remplacées par un timbre.
4. Si, à la demande de l'expéditeur, le transporteur établit la lettre de transport aérien, il est considéré, jusqu'à preuve contraire, comme agissant au nom de l'expéditeur.

#### *Article 7*

Lorsqu'il y a plusieurs colis:

- (a) le transporteur de marchandises a le droit de demander à l'expéditeur l'établissement de lettres de transport aérien distinctes;
- (b) l'expéditeur a le droit de demander au transporteur la remise de récépissés distincts, lorsque les autres moyens visés à l'alinéa 2 de l'article 5 sont utilisés.

#### *Article 8*

La lettre de transport aérien et le récépissé de la marchandise contiennent:

- (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) la mention du poids de l'expédition.

#### *Article 9*

L'inobservation des dispositions des articles 5 à 8 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, y compris celles qui portent sur la limitation de responsabilité.

### **Article 10**

1. L'expéditeur est responsable de l'exactitude des indications et déclarations concernant la marchandise inscrites par lui ou en son nom dans la lettre de transport aérien, ainsi que de celles fournies et faites par lui ou en son nom au transporteur en vue d'être insérées dans le récépissé de la marchandise ou pour insertion dans les données enregistrées par les autres moyens prévus à l'alinéa 2 de l'article 5.

2. L'expéditeur assume 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 des indications et déclarations irrégulières, inexactes ou incomplètes fournies et faites par lui ou en son nom.

3. Sous réserve des dispositions des alinéas 1 et 2 du présent article, le transporteur assume la responsabilité de tout dommage subi par l'expéditeur ou par toute autre personne à l'égard de laquelle la responsabilité de l'expéditeur est engagée, à raison des indications et déclarations irrégulières, inexactes ou incomplètes insérées par lui ou en son nom dans le récépissé de la marchandise ou dans les données enregistrées par les autres moyens prévus à l'alinéa 2 de l'article 5.

### **Article 11**

1. La lettre de transport aérien et le récépissé de la marchandise font foi, jusqu'à preuve contraire, de la conclusion du contrat, de la réception de la marchandise et des conditions du transport qui y figurent.

2. Les énonciations de la lettre de transport aérien et du récépissé de la marchandise, 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 initialement désigné, 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 ou du récépissé de la marchandise délivré à celui-ci, il sera responsable, sauf son recours contre l'expéditeur, du préjudice qui pourra être causé par ce fait à celui qui est régulièrement en possession de la lettre de transport aérien ou du récépissé de la marchandise.

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

### **Article 13**

1. Sauf lorsque l'expéditeur a exercé le droit qu'il tient de l'article 12, le destinataire a le droit, dès l'arrivée de la marchandise au point de destination, de demander au transporteur de lui livrer la marchandise contre le paiement du montant des créances et contre l'exécution des conditions de transport.

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

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 de transport 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 ou dans le récépissé de la marchandise.

### **Article 16**

1. L'expéditeur est tenu de fournir les renseignements et 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**

### **RESPONSABILITE 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 lorsque l'événement qui a causé le dommage s'est produit pendant le transport aérien.

2. Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de la marchandise par cela seul que le fait qui a causé le dommage s'est produit pendant le transport aérien.

3. Toutefois, le transporteur n'est pas responsable s'il établit que la destruction, la perte ou l'avarie de la marchandise résulte uniquement de l'un ou de plusieurs des faits suivants:

- (a) la nature ou le vice propre de la marchandise;
- (b) l'emballage défectueux de la marchandise par une personne autre que le transporteur ou ses préposés;
- (c) un fait de guerre ou un conflit armé;
- (d) un acte de l'autorité publique accompli en relation avec l'entrée, la sortie ou le transit de la marchandise.

4. Le transport aérien, au sens des alinéas précédents, 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.

5. 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**

Dans le transport de passagers et de bagages et un cas de dommage résultant d'un retard dans le transport de marchandises, 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**

1. Dans le transport de passagers et de bagages, 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.

2. Dans le transport de marchandises, le transporteur est exonéré, en tout ou en partie, de sa responsabilité dans la mesure où il prouve que la faute de la personne qui demande réparation ou de la personne dont elle tient ses droits a causé le dommage ou y a contribué.

#### **Article 22**

(1) Dans le transport des personnes, la responsabilité du transporteur relative à chaque passager est limitée à la somme de 16.000 Droits de Tirage spéciaux. 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.

- (a) (2) Dans le transport de bagages enregistrés, la responsabilité du transporteur est limitée à la somme de 17 Droits de Tirage spéciaux 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) Dans le transport de marchandises, la responsabilité du transporteur est limitée à la somme de 17 Droits de Tirage spéciaux 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.

(c) 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 332 Droits de Tirage spéciaux 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 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 Droits de Tirage spéciaux dans le présent article sont considérées comme se rapportant au Droit de Tirage spécial tel que défini par le Fonds Monétaire International. La conversion de ces sommes en monnaies nationales s'effectuera en cas d'instance judiciaire suivant la valeur de ces monnaies en Droit de Tirage spécial à la date du jugement.

(6) Les sommes indiquées en Droits de Tirage spéciaux dans le présent article sont considérées comme se rapportant au Droit de Tirage spécial tel que défini par le Fonds monétaire international. La conversion de ces sommes en monnaies nationales s'effectuera en cas d'instance judiciaire suivant la valeur de ces monnaies en Droit de Tirage spécial à la date du jugement. La valeur, en Droit de Tirage spécial, d'une monnaie nationale d'une Haute Partie Contractante qui est membre du Fonds monétaire international, est calculée selon la méthode d'évaluation appliquée par le Fonds monétaire international à la date du jugement pour ses propres opérations et transactions. La valeur, en Droit de Tirage spécial, d'une monnaie nationale d'une Haute Partie Contractante qui n'est pas membre du Fonds monétaire international, est calculée de la façon déterminée par cette Haute Partie Contractante.

Toutefois, les Etats qui ne sont pas membres du Fonds monétaire international et dont la législation ne permet pas d'appliquer les dispositions de l'alinéa 2(b) de l'article 22, peuvent au moment de la ratification ou de l'adhésion, ou à tout moment par la suite, déclarer que la limite de responsabilité du transporteur est fixée, dans les procédures judiciaires sur leur territoire, à la somme de deux cent cinquante unités monétaires par kilogramme, cette unité monétaire correspondant à soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Cette somme peut être convertie dans la monnaie nationale concernée en chiffres ronds. La conversion de cette somme en monnaie nationale s'effectuera conformément à la législation de l'Etat en cause.

### **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 1er 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 le transport de passagers et de bagages, 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, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs.

2. Dans le transport de marchandises, toute action en réparation introduite, à quelque titre que ce soit, que ce soit en vertu de la présente Convention, en raison d'un contrat ou d'un acte illicite ou pour toute autre cause, ne peut être exercée que dans les conditions et limites de responsabilité prévues par la présente Convention, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs. Ces limites de responsabilité constituent un maximum et sont infranchissables quelles que soient les circonstances qui sont à l'origine de la responsabilité.

#### **Article 25**

Dans le transport de passagers et de bagages, 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 leurs 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.

(3) Dans le transport de passagers et de bagages, 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 1er, à exécuter par divers transporteurs successifs, chaque transporteur acceptant des voyageurs, des bagages ou des marchandises est soumis aux règles 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 effectué sous son contrôle.

(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.

#### **Article 30A**

La présente Convention ne préjuge en aucune manière la question de savoir si la personne tenue pour responsable en vertu de ses dispositions a ou non un recours contre toute autre personne.

### **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 toute 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 1er.

(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**

### **DISPOSITONS 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*

Sous réserve des dispositions de l'alinéa 3 de l'article 5, 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.

#### *Article 34*

Les dispositions des articles 3 à 8 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 40A*

(1) ...

(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.

### **PROTOCOL ADDITIONNEL (AdArticle 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"



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order implements in the UK Protocol No. 4 of Montreal, 1975 which amends the Warsaw Convention (the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October 1929), as amended by the Hague Protocol on 28th September 1955.

In the context of this Order the principal effect of Protocol No. 4 of Montreal is to simplify documentation relating to international carriage of cargo and to introduce strict liability in respect of the international carriage of cargo except if the destruction, loss or damage to the cargo resulted solely from an inherent defect of the cargo, defective packing of that cargo by someone other than the carrier or his servants or agents, an act of war or armed conflict or an act of a public authority in connection with the entry, exit or transit of the cargo. The liability limits are maximum limits.