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INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL CONFERENCE ON AIR LAW

(Convention for the Unification of Certain Rules for International Carriage by Air)

Montreal, 10 – 28 May 1999

VOLUME II

DOCUMENTS

1999

MONTREAL CANADA

DCW

International Civil Aviation Organization

INTERNATIONAL CONFERENCE

ON AIR LAW

Montreal, 10 – 28 May 1999

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MONTREAL CANADA

TABLE OF CONTENTS

VOLUME II

[1]Text approved by the 30th Session of the ICAO Legal Committee, refined by the Special Group on the Modernization and Consolidation of the Warsaw System.

[2] Including Attachment

[3] Including Attachment

[4] Including Attachment

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[9] Including Attachment

[10] English and Arabic only

[11] Including Appendices

[12] English only

[13] Including Attachment

[14] Including Attachments

* Corrigendum

DCW Doc No. 1
9/11/98

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 29 May 1999)

PROVISIONAL AGENDA

1. Opening of the Conference by the President of the Council.

2. Adoption of the Agenda.

3. Adoption of the Rules of Procedure.

4. Election of the President of the Conference.

5. Election of Vice-Presidents of the Conference.

6. Establishment of Credentials Committee.

7 Organization of work:

   (a) procedure for the consideration of the draft Convention for the Unification of Certain Rules for International Carriage by Air;

   (b) establishment of the Commission of the Whole and Committees as necessary.

8. Report of the Credentials Committee.

9. Consideration of the draft Convention.

10. Adoption of the Convention and of any Resolutions.

11. Adoption of the Final Act of the Conference.

12. Signature of the Final Act and of the Convention.

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DCW Doc No. 2
9/11/98

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 29 May 1999)

PROVISIONAL RULES OF PROCEDURE

Rule 1 (Composition of the Conference)

(1) The Conference shall be composed of the Representatives of the States invited by the Council of the International Civil Aviation Organization (ICAO) to attend the Conference.

(2) Representatives may be accompanied by alternates and advisers.

(3) International organizations invited by the Council of ICAO to attend the Conference may be represented by observers.

Rule 2 (Credentials and Credentials Committee)

(1) The credentials of Representatives of the States, their alternates and advisers and of observers shall be submitted to the Secretary General if possible not later than twenty-four hours after the opening of the Conference. The credentials shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs. No person shall be the Representative of more than one State.

(2) A credentials Committee shall be established at the beginning of the Conference. It shall consist of five members representing five States nominated by the President of the Conference.

(3) The Credentials Committee shall elect it own Chairman and shall examine the credentials of Delegates and report to the Conference without delay.

Rule 3 (Eligibility for participation in meetings)

Any members of a Delegation shall be entitled, pending the presentation of a report by the Credentials Committee and Conference action thereon, to attend meetings and to participate in them, subject, however, to the limits set forth in these Rules. The Conference may bar from any further part in its activities any member of a Delegation whose credentials it finds to be insufficient.

Rule 4 (Officers)

(1) The Conference shall elect its President. Until such election, the President of the ICAO Council or, in his absence, his nominee, shall act as President of the Conference.

(2) The Conference shall elect four Vice-Presidents and the Chairman of the Commissions referred to in Rule 5.

(3) The Conference shall have a Secretary General who shall be the Secretary General of the International Civil Aviation Organization or his nominee.

Rule 5 (Commissions, Committees and Working Groups)

(1) The Conference shall establish such Commissions open to all delegations or Committees of limited membership as it may consider to be necessary or desirable.

(2) A Commission or a Committee shall establish such Working Groups as it may consider to be necessary or desirable. Each Committee or Working Group shall elect its own Chairman.

Rule 6 (Public and private meetings)

Meetings of the Conference shall be held in public unless the Conference decides that any of its meetings shall be held in private. Meetings of the Commissions, Committees and Working Groups shall not be open to the public except by decision of the Commissions, Committees and Working Groups concerned.

Rule 7 (Participation of observers)

(1) Observers may participate without vote in the deliberation of the Conference, when its meetings are not held in private. With respect to private meetings, individual observers may be invited by the Conference to attend and to be heard.

(2) Observers may attend and be heard by the Commissions, Committees and Working Groups if invited by the body concerned.

Rule 8 (Quorum)

(1) A majority of the States represented at the Conference and whose Representatives have not notified the Secretary General of their departure shall constitute a quorum.

(2) The Conference shall determine the quorum for the Commissions and Committees if, in any case, it is considered necessary that a quorum be established for such bodies.

Rule 9 (Powers of the presiding Officer)

The presiding Officer of the Conference, a Commission, a Committee or a Working Group shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and subject to these Rules, shall have complete control of the proceedings of the body concerned and over the maintenance of order at its meetings.

Rule 10 (Speakers)

(1) The presiding Officer shall call upon speakers in the order in which they have expressed their desire to speak; he may call a speaker to order if his observations are not relevant to the subject under discussion.

(2) Generally, no delegation should be called to speak a second time on any question except for clarification, until all other delegations desiring to speak have had an opportunity to do so.

(3) At meetings of the Conference, the Chairman of a Commission or a Committee may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In Commission or Committee meetings, a similar precedence may be given to the Chairman of a Working Group.

Rule 11 (Points of Order)

During the discussion on any matter, and notwithstanding the provisions of Rule 10, a Representative of a State may at any time raise a point of order, and the point of order shall be immediately decided by the presiding Officer. Any Representative of a State may appeal against the ruling of the presiding Officer and any discussion on the point of order shall be governed by the procedure stated in Rule 14. The ruling of the presiding Officer shall stand unless over-ruled by a majority of votes cast. A Representative of a State speaking on a point of order may speak only on this point, and may not speak on the substance of the matter under discussion before the point was raised.

Rule 12 (Time limit of Speeches)

A presiding Officer may limit the time allowed to each speaker, unless the body concerned decides otherwise.

Rule 13 (Motions and Amendments)

(1) A motion or amendment shall not be discussed until it has been seconded. Motions and amendments may be presented and seconded only by Representatives of States. However, observers may make a motion or amendment provided that such motion or amendment must be seconded by the Representatives of two States.

(2) A motion shall not be withdrawn when an amendment to the motion is under discussion or has been adopted.

Rule 14 (Procedural matters)

Subject to the provisions of Rule 13(1) any Representative of a State may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion of an item, or the closure of the debate on an item. After such a motion has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it, and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding Officer, who shall decide the priority of recognition.

Rule 15 (Order of Procedural Motions)

The following motions shall have priority over all other motions, and shall be taken in the following order:

(a) to suspend the meeting;
(b) to adjourn the meetings;
(c) to adjourn the debate on an item;
(d) to defer the debate on an item;
(e) for closure of the debate on an item.

Rule 16 (Reconsideration of Proposals)

Permission to speak on a motion to reopen a debate already completed by a vote on a given question shall normally be accorded only to the proposer and to one speaker in opposition, after which it shall be immediately put to vote. Additional speeches on such a motion may be allowed at the discretion of the presiding Officer, who shall decide the priority of recognition. Speeches on a motion to reopen shall be limited in content to matters bearing directly on the justification for reopening. Such reopening shall require a two-thirds majority of the Representatives present and voting.

Rule 17 (Discussions in Working Groups)

Working Groups shall conduct their deliberations informally and Rules 11, 12, 13, 14, 15 and 16 shall not apply to them.

Rule 18 (Voting Rights)

(1) Each State duly represented at the Conference shall have one vote at meetings of the Conference.

(2) Each State represented in a Commission, Committee or Working Group shall have one vote at meetings of such bodies.

(7) Observers shall not be entitled to vote.

Rule 19 (Voting of presiding Officer)

Subject to the provisions of Rule 18, the presiding Officer of the Conference, Commission, Committee or Working Group shall have the right of vote on behalf of his State.

Rule 20 (Majority required)

(1) Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the Representatives present and voting.

(2) Decisions of the Conference on matters of procedure shall be taken by a majority of the Representatives present and voting.

(3) If the question arises whether a matter is one of procedure or of substance, the presiding Officer shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the presiding Officer's ruling shall stand unless the appeal is approved by a majority of the Representatives present and voting.

(4) For the purpose of these rules, the phrase "Representatives present and voting" means Representatives present and casting an affirmative or negative vote. Representative who abstain from voting shall be considered as not voting.

Rule 21 (Method of Voting)

Voting shall normally be by voice, by show of hands, or by standing. In meetings of the Conference there shall be a roll-call if requested by the Representatives of two States. The vote or abstention of each State participating in roll-call shall be recorded in the minutes.

Rule 22 (Division of Motions)

On request of any Representative of a State and unless the Conference decides otherwise, parts of a motion shall be voted on separately. The resulting motion shall then be put to a final vote in its entirety.

Rule 23 (Voting on Amendments)

Any amendment to a motion shall be voted on before vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness from the original motion, commencing with the most remote. The presiding Officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

Rule 24 (Voting on Alternative or Substitute Motions)

Alternative or substitute motions, shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding Officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motions and any amendments thereto. This ruling may be reversed by a majority of votes cast.

Rule 25 (Tie vote)

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Conference, Commission, Committee or Working Group decides that such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, it shall be considered lost.

Rule 26 (Proceedings of Commissions, Committees and Working Groups)

Subject to the provisions of Rule 17 the provisions contained in Rules 10 to 25 above shall be applicable, *mutatis mutandis*, to the proceedings of Commissions, Committees and Working Groups, except that decisions of such bodies shall be taken by a majority of the Representatives present and voting but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by Rule 16.

Rule 27 (Languages)

(1) Documents of the Conference shall be prepared and circulated in the English, Arabic, French, Russian and Spanish languages.

(2) The English, Arabic, French, Russian and Spanish languages shall be used in the deliberations of the Conference, Commissions, Committees and Working Groups. Speeches made in any of the five languages shall be interpreted into the other four languages, except where such interpretation is dispensed with by unanimous consent.

(3) Any Representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Rule 28 (Record of Proceedings)

(1) Minutes of the meetings of the Conference shall be prepared by the Secretariat and approved by the Conference.

(2) Proceedings of Commissions, Committees and Working Groups shall be recorded in such form as the body concerned may decide.

Rule 29 (Amendment of the Rules of Procedure)

These Rules may be amended, or any portion of the Rules may be suspended, at any time by a decision of the Conference taken by a majority vote of the Representatives present and voting.

Rule 30 (Representative of a State – Definition)

In these Rules, except Rule 1, the expression "Representative of a State" shall be deemed to include any member of the delegation of a State.

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DCW Doc No. 3
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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 29 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

Text approved by
the 30th Session of the ICAO Legal Committee,
Montreal, 28 April – 9 May 1997
and refined by
the Special Group on the Modernization and Consolidation
of the "Warsaw System",
Montreal, 14 – 18 April 1998

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DCW Doc No. 3
9/11/98

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

[As approved by the Special Group on the Modernization and Consolidation of the "Warsaw System", which met in Montreal from 14 to 18 April 1998]

THE STATES PARTIES TO THIS CONVENTION;

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 - Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State 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 carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 - Carriage Performed by State - Postal Items

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 - Passengers and Baggage

1. In respect of carriage of passengers an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written 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, this Convention may be applicable and that the Convention governs and in some cases limits the liability of carriers for death or injury, destruction or loss of, or damage to baggage, and delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 - Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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.

Article 5 - Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 nature and weight of the consignment.

Article 6 - Description of Air Waybill

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 by the carrier. The third part shall be signed by the carrier who shall hand it 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, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7 - Documentation of Multiple Packages

When there is more than one package:

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 8 - Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 7 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 9 - Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 10 - Evidentiary Value of Documentation

1. The air waybill or the cargo receipt 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 cargo receipt 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 nature, 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 it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 11 - Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 12. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 12 - Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 11, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, 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 or consignor is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 13 - Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 11 and 12, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 14 - Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 11, 12 and 13 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 11, 12 and 13 can only be varied by express provision in the air waybill or the cargo receipt.

Article 15 - Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities 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, its 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 and Extent of Compensation for Damage

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable to the extent that the death or injury resulted from the state of health of the passenger.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 17 - Damage to Cargo

1. 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 event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway 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 transhipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 18 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage, or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 19 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.

Article 20 - Compensation in Case of Death or Injury of Passengers

The carrier shall not be liable for damage arising under paragraph 1 of Article 16 which exceeds for each passenger 100 000 SDR if the carrier proves that:

(a) the carrier and its servants and agents had taken all necessary measures to avoid the damage; or

(b) it was impossible for the carrier or them to take such measures; or

(c) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 21 A - Limits of Liability

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons the liability of the carrier for each passenger is limited to [4 150][1] Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to [1 000][1] Special Drawing Rights for each passenger unless the passenger has made, at the time when checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of [17][2] Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of loss, damage or delay of part of the 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 cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1, 2 and 3 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 20 and 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, including interest. 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.

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[1] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

[2] This figure is taken from Montreal Protocol No. 4 and is used for illustrative purposes only.

Article 21 B - Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 the judgment. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect 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 State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 20 is fixed at a sum of [1 500 000][3] monetary units per passenger in judicial proceedings in their territories: [62 500][3] monetary units per passenger with respect to paragraph 1 of Article 21 A; [15 000][3] monetary units per passenger with respect to paragraph 2 of Article 21 A; and [250][3] monetary units per kilogramme with respect to paragraph 3 of Article 21 A. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 20, 21 A, 21 B and 21 C as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 21 C - Review of Limits

1. Without prejudice to the provisions of Article 21 D of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Article 20 and Articles 21 A and B shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 21 B.

[3] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 21 D - Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 22 - Invalidity of Contractual Provisions

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

Article 22 A - Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from making advance payments based on the immediate economic needs of families of victims or survivors of accidents, from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

Article 23 - Basis of Claims

In the carriage of passengers, baggage, and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 24 - Servants, Agents - Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if he or she proves that he or she acted within the scope of his or her employment, shall be entitled to avail himself or herself of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 25 - Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in Article 3, paragraph 2, and Article 4, paragraph 2.

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or despatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 26 - Death of Person Liable

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 or her estate.

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or in the territory of a State Party:

(a) in which at the time of the accident the passenger has his or her principal and permanent residence; and

(b) to or from which the carrier actually or contractually operates services for the carriage by air; and

(c) in which that carrier conducts its business of carriage by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. In this Article, "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision or marketing of their joint services for carriage by air.

[3 *bis*. At the time of ratification, adherence or accession, each State Party shall declare whether the preceding paragraph 2 shall be applicable to it and its carriers. All declarations made under this paragraph shall be binding on all other States Parties and the depositary shall notify all States Parties of such declarations.]

4. Questions of procedure shall be governed by the law of the Court seised of the case.

Article 28 - Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 27.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 29 - Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of 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 that period shall be determined by the law of the Court seised of the case.

Article 30 - Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier who accepts passengers, baggage or cargo is subject to the rules set out in this Convention, and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her, 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 31 - Right of Recourse against Third Parties

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

Combined Carriage

Article 32 - Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 17, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 33 - Contracting Carrier - Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 34 - Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article 33, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which it performs.

Article 35 - Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 20, 21 A, 21 B and 21 C of this Convention.

Article 36 - Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 11 of this Convention shall only be effective if addressed to the contracting carrier.

Article 37 - Servants and Agents

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

Article 38 - Aggregation of Damages

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

Article 39 - Addressee of Claims

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

Article 40 - Additional Jurisdiction

Any action for damages contemplated in Article 39 must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 27 of this Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has its principal place of business.

Article 41 - Invalidity of Contractual Provisions

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Chapter.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

Article 42 - Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 39, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Final Provisions

Article 43 - Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 44 – repositioned and renumbered as Article 22 A

Article 45 - Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 46 - Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 7 inclusive relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 47 - Definition of Days

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

Article 48 - Reservations[4]

No reservation may be made to this Convention except that a State may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

[Final clauses to be inserted]

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[4]This Article is without prejudice to any other reservation which the Diplomatic Conference might wish to consider.

DCW Doc No. 4
5/3/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

REFERENCE TEXT

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Introduction

The attached Reference Text is provided as a working tool to facilitate the identification of the origin of the various components of the Draft Convention, in particular the amendments to the existing instruments of the "Warsaw System".

Explanatory Note

For each paragraph, the references at the right margin indicate the source of each provision, abbreviated as follows:

W - Warsaw Convention
H - The Hague Protocol
MP3 - Additional Protocol No. 3
MP4 - Montreal Protocol No. 4
GCP - Guatemala City Protocol
Guada. - Guadalajara Convention

along with paragraph and sub-paragraph numbers.

Text which has been deleted from a source instrument is indicated by a strike-out notation (e.g. ~~Warsaw Convention~~), while any additions to the text of a source instrument are highlighted in grey (e.g. this Convention). When the addition is substantial, that is comprising an entire sentence or paragraph, the words **New Text** appear in the margin next to the highlighted text. By contrast, any new article or sub-paragraph which has been drafted specifically for this Convention is indicated by the words **New Text** in the margin and the text is not highlighted.

When the text is reproduced unchanged from an existing Warsaw System instrument, only the designation of the source appears in the right margin. The term **modified** covers slight changes from the source and changes of an editorial nature, whereas more complex changes and changes made by amalgamating different sources are indicated by the term **redrafted**.

The references to LC/30 and/or SGMW indicate that text has been **drafted by, modified by** or **amended by** the 30th Session of the Legal Committee and/or the Special Group on the Modernization and Consolidation of the "Warsaw System". If no reference is made to either LC/30 or SGMW, the modification was made by the ICAO Secretariat.

Further refinements by SGMW to modifications by LC/30 are indicated by the words **refined by SGMW**.

In the few instances where it was not possible to maintain the above methodology, the notes in the margin provide additional information.

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION;

New text – LC/30

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 – Scope of Application

New Title – LC/30

1. This Convention applies to all international carriage of persons, ~~luggage~~ baggage or ~~goods~~ cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

W.1(1) modified

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 transhipment, are situated either within the territories of two ~~High Contracting~~ States Parties, or within the territory of a single ~~High Contracting~~ State Party if there is an agreed stopping place within the territory of another State, even if that State is not a ~~High Contracting~~ State Party. Carriage between two points within the territory of a single ~~High Contracting~~ State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

H.I.2 modified

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

H.I.3 modified by LC/30

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

New Text – LC/30

Article 2 – Carriage Performed by State - Postal Items

New Title – LC/30

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.

W.2(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.

MP4.II.2

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

MP4.II.3

Chapter II

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

New Text – LC/30

Article 3 – Passengers and Baggage

New Title – LC/30

1. In respect of ~~the~~ carriage of passengers an individual or collective document of carriage shall be delivered containing:

GCP.II.1 modified by LC/30

(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~~ State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which ~~would preserve~~ preserves ~~a record of~~ the information indicated in ~~a) and b) of the foregoing~~ paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

GCP.II.2 modified by LC/30

New Text – LC/30

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

New Text – LC/30

4. The passenger shall be given written 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~~ this Convention may be applicable and that the Convention governs and in ~~most~~ some cases limits the liability of carriers for death or ~~personal~~ injury ~~and in respect of loss of~~, destruction or loss of, or damage to baggage, and delay.

H. III.1c redrafted modified by LC/30

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

GCP.II.3 modified by LC/30 refined by SGMW

Article 4 - Cargo

New Title – LC/30

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

MP4.III.5(1)

2. Any other means which ~~would preserve~~ preserves 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.

MP4.III.5(2) modified by LC/30

~~3. The impossibility of using, at points of transit and destination, the other means which would preserve preserves the 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.~~

MP4.III.5(3) deleted by LC/30

Article 5 - Contents of Air Waybill ~~and~~ or Cargo Receipt

New Title – LC/30 refined by SGMW

The air waybill ~~and the receipt for the cargo~~ ~~and~~ or the cargo receipt shall ~~contain~~ include:

MP4.III.8 modified by LC/30 refined by SGMW

(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~~ State 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 nature and weight of the consignment.

Article 6 - Description of Air Waybill — New Title – LC/30

1. The air waybill shall be made out by the consignor in three original parts. — MP4.III.6 modified by LC/30

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 by the carrier. The third part shall be signed by the carrier ~~and handed by him~~ who shall hand it 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~~ the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7 - Documentation of Multiple Packages — New Title – LC/30

When there is more than one package: — MP4.III.7 modified by SGMW

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 8 - Non-compliance with Documentary Requirements — New Title – LC/30

Non-compliance with the provisions of Articles 4 to 7 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. — MP4.III.9

Article 9 - Responsibility for Particulars of Documentation — New Title – LC/30

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by ~~him~~ it or on ~~his~~ its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the ~~receipt for the cargo~~ cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier. — MP4.III.10 modified by LC/30 — New Text

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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~~ it, 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~~ its behalf in the ~~receipt for the cargo~~ cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 10 - Evidentiary Value of Documentation — New Title – LC/30

1. The air waybill or the ~~receipt for the cargo~~ cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein. — MP4.III.11 modified by LC/30 refined by SGMW

2. Any statements in the air waybill or the ~~receipt for the cargo~~ cargo receipt relating to the ~~nature~~, 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 nature, 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~~ it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 11 - Right of Disposition of Cargo — New Title – LC/30

1. Subject to ~~his~~ its liability to carry out all ~~his~~ its 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~~ The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and ~~he~~ must reimburse any expenses occasioned by the exercise of this right. — MP4.III.12 modified by LC/30

2. If it is impossible to carry out the ~~orders~~ instructions of the consignor the carrier must so inform ~~him~~ the consignor forthwith.

3. If the carrier ~~obeys the orders~~ carries out the instructions 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~~ cargo receipt delivered to the latter, ~~he~~ the carrier will be liable, without prejudice to ~~his~~ its 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~~ cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 12. Nevertheless, if the consignee declines to accept the cargo, or ~~if he~~ cannot be communicated with, the consignor resumes ~~his~~ its right of disposition.

Article 12 - Delivery of the Cargo

New Title – LC/30

1. Except when the consignor has exercised ~~his~~ its right under Article 11, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to ~~him~~ it, on payment of the charges due and on complying with the conditions of carriage.

MP4.III.13 modified by LC/30

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 or consignor is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 13 - Enforcement of the Rights of Consignor and Consignee

New Title – LC/30

The consignor and the consignee can respectively enforce all the rights given to them by Articles 11 and 12, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

MP4.III.14

Article 14 - Relations of Consignor and Consignee or Mutual Relations of Third Parties

New Title – LC/30

1. Articles 11, 12 and 13 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

MP4.III.15 modified by LC/30

2. The provisions of Articles 11, 12 and 13 can only be varied by express provision in the air waybill or the ~~receipt for the cargo~~ cargo receipt.

Article 15 - Formalities of Customs, ~~Octroi or~~ Police or Other Public Authorities

New Title – LC/30

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, ~~octroi or~~ police and any other public authorities 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~~ its servants or agents.

MP4.III.16 modified by LC/30

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 and Extent of Compensation for Damage

Article 16 - Death and Injury of Passengers - Damage to Baggage

New Title – LC/30

1. The carrier is liable for damage sustained in case of death or ~~personal~~ bodily ~~or mental~~ injury of a passenger upon condition only that the ~~event~~ accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable ~~if~~ to the extent that the death or injury resulted ~~solely~~ from the state of health of the passenger.

GCP.IV.1
modified by LC/30
refined by SGMW

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted ~~solely~~ from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

GCP.IV.2
modified by LC/30
refined by SGMW

~~[~~3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.~~]~~

drafted by LC/30
adopted by SGMW

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and ~~objects carried by the passenger~~ unchecked baggage.

GCP.IV.3
modified by LC/30

Article 17 - Damage to Cargo

New Title - LC/30

1. 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~~ event which caused the damage so sustained took place during the carriage by air.

MP4.IV.2
modified by LC/30

2. However, the carrier is not liable if ~~he~~ and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted ~~solely~~ from one or more of the following:

MP4.IV.3
modified by LC/30
refined by SGMW

(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~~ its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of ~~the preceding paragraphs~~ paragraph 1 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~~.

MP4.IV.4
modified by LC/30

4. The period of the carriage by air does not extend to any carriage by land, by sea or by ~~river~~ inland waterway 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 transhipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

MP4.IV.5 modified by LC/30

New Text

Article 18 - Delay

New Title – LC/30

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, ~~luggage or goods~~ baggage, or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

W.19 modified by LC/30

New Text

Article 19 - Exoneration

New Title – LC/30

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from ~~his~~ its liability to ~~such person~~ the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of ~~the~~ death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from ~~his~~ its liability to the extent that ~~he~~ it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.

GCP.VII / MP4.VI modified by LC/30

Article 20 - Compensation in Case of Death or Injury of Passengers

New Title – LC/30

The carrier shall not be liable for damage arising under paragraph 1 of Article 16 which exceeds for each passenger 100 000 SDR if the carrier proves that:

SGMW For this Article as drafted by the Legal Committee, see LC/30 Report, Doc 9693-LC/190

(a) the carrier and its servants and agents had taken all necessary measures to avoid the damage; or

W.20(1) modified

(b) it was impossible for the carrier or them to take such measures; or

W.20(1) modified

(c) such damage was solely due to the negligence or other wrongful act or omission of a third party.

New Text

Article 21 A - Limits of Liability

New Title – LC/30

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons the liability of the carrier for each passenger is limited to [4 150][1] Special Drawing Rights.

MP3.II.1b modified by LC/30

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to [1 000][1] Special Drawing Rights for each passenger unless the passenger ~~or consignor~~ has made, at the time when ~~the package~~ checked baggage 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 it proves that the sum is greater than the passenger's ~~or consignor's~~ actual interest in delivery at destination.

MP3.II.1c / H.XI.2a) modified by LC/30

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of [17][2] Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless ~~he~~ it proves that the sum is greater than the consignor's actual interest in delivery at destination.

MP4.VII.b. modified by LC/30

4. In the case of loss, damage or delay of part of the 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 cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

MP3.II.2b modified

5. ~~The limits of liability specified in Article 22~~ The foregoing provisions of paragraphs 1, 2 and 3 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, ~~his~~ its 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~~ such servant or agent was acting within the scope of ~~his~~ its employment.

H.XIII modified by LC/30 refined by SGMW

[1] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

[2] This figure is taken from Montreal Protocol No. 4 and is used for illustrative purposes only.

6. The limits prescribed in Article 20 and 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, including interest. 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.

H.XI.4
modified by LC/30

Article 21 B - Conversion of Monetary Units

New Title – LC/30

1. The sums mentioned in terms of ~~the~~ Special Drawing Right in this ~~article~~ Convention 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 the judgment. The value of a national currency, in terms of the Special Drawing Right, of a ~~High Contracting~~ State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect 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~~ State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that ~~High Contracting Party~~ State.

MP4.VII.d
modified

2. 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 1 of this Article ~~22~~ may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 20 is fixed at a sum of [1 500 000][3] monetary units per passenger in judicial proceedings in their territories: [62 500][3] monetary units per passenger with respect to paragraph 1 of Article 21 A; [15 000][3] monetary units per passenger with respect to paragraph 2 of Article 21 A; and [250][3] monetary units per kilogramme with respect to paragraph 3 of Article 21 A. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

MP4.VII.d
modified

MP3.II.4
redrafted

[3] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 20, 21 A, 21 B and 21 C as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

New Text HNS[4] Article 6(9c) modified

Article 21 C - Review of Limits

New Title – SGMW

†1. Without prejudice to the provisions of Article 21 D of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Article 20 and Articles 21 A and B shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 21 B.

drafted by LC/30 amended by SGMW

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

drafted by LC/30 amended by SGMW

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.†

drafted by LC/30 amended by SGMW

[4] IMO Draft Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea

Article 21 D - Stipulation on Limits

New Title – LC/30

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

New Text – LC/30

Article 22 - Invalidity of Contractual Provisions

New Title – LC/30

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

W.23

Article 22 A* - Freedom to Contract

New Title – LC/30
*former Article 44 of the LC/30 draft repositioned by SGMW

Nothing contained in this Convention shall prevent the carrier from making advance payments based on the immediate economic needs of families of victims or survivors of accidents, from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

New Text – LC/30

MP4.III modified

Article 23 - Basis of Claims

New Title – LC/30

In the carriage of passengers, baggage, and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

MP4.VIII.1 and 2
GCP.IX.2 redrafted

New Text – SGMW

Article 24 - Servants, Agents - Aggregation of Claims

New Title – LC/30

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if he or she proves that he or she acted within the scope of his or her employment, shall be entitled to avail himself or herself of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

H.XIV.1
modified by LC/30
refined by SGMW

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

H.XIV.2
modified by LC/30

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

H.XIV.3

Article 25 - Timely Notice of Complaints — New Title – LC/30

1. Receipt by the person entitled to delivery of ~~luggage or goods~~ checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in Article 3, paragraph 2, and Article 4, paragraph 2. — W.26.1 modified by LC/30; New Text

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal. — H.XV modified by LC/30

3. Every complaint must be made in writing ~~upon the document of carriage or by separate notice in writing~~ and given or despatched within the times aforesaid. — W.26.3 modified by LC/30

4. ~~Failing complaint~~ If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part. — W.26.4 modified by LC/30

Article 26 - Death of Person Liable — New Title – LC/30

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 or her estate. — W.27 modified by LC/30

Article 27 - Jurisdiction — New Title – LC/30

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the ~~High Contracting~~ States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination. — W.28.1 modified by LC/30

2. In respect of damage resulting from the death or injury of a passenger, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or in the territory of a State Party: — New Text – LC/30 For this Article as drafted by the Legal Committee, see LC/30 Report, Doc 9693-LC/190

(a) in which at the time of the accident the passenger has his or her principal and permanent residence; and — New Text – SGMW

(b) to or from which the carrier actually or contractually operates services for the carriage by air; and — New Text – SGMW

(c) in which that carrier conducts its business of carriage by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement. — New Text – SGMW

3. In this Article, "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision or marketing of their joint services for carriage by air.

New Text – SGMW

[3 *bis*. At the time of ratification, adherence or accession, each State Party shall declare whether the preceding paragraph 2 shall be applicable to it and its carriers. All declarations made under this paragraph shall be binding on all other States Parties and the depositary shall notify all States Parties of such declarations.]

New Text – SGMW
For the reason for the inclusion of this clause and the square brackets, please see SGMW/1 Report, paragraph 2:117

4. Questions of procedure shall be governed by the law of the Court seised of the case.

W.28.2

Article 28 - Arbitration

New Title – LC/30

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

New Text – LC/30

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 27.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 29 - Limitation of Actions

New Title – LC/30

1. The right to damages shall be extinguished if an action is not brought within a period of 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.

W.29.1 modified

2. The method of calculating ~~the~~ that period ~~of limitation~~ shall be determined by the law of the Court seised of the case.

W.29.2 modified

Article 30 - Successive Carriage

New Title – LC/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 3 of Article 1, each carrier who accepts passengers, ~~luggage or goods~~ baggage or cargo is ~~subjected~~ subject to the rules set out in this Convention, and is deemed to be one of the ~~contracting~~ parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under ~~his~~ its supervision.

W.30.1 modified by LC/30

2. In the case of carriage of this nature, the passenger or ~~his representative~~ any person entitled to compensation in respect of him or her, 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.

W.30.2. modified by LC/30

3. As regards ~~luggage or goods~~ 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.

W.30.3 modified

Article 31 - Right of Recourse against Third Parties

New Title – LC/30

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.

MP4.XI

Chapter IV

Combined Carriage

Article 32 - Combined Carriage

New Title – LC/30

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 17, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

W.31.1 modified by SGMW

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.

W.31.2

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 33 - Contracting Carrier - Actual Carrier

New Title – LC/30

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes ~~an agreement for~~ a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Guada. Ib)-Ic) redrafted refined by SGMW

Article 34 - Respective Liability of Contracting and Actual Carriers

New Title – LC/30

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article 33, is governed by ~~the Warsaw~~ this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this ~~Convention~~ Chapter, be subject to the rules of ~~the Warsaw~~ this Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which ~~he~~ it performs.

Guada. II
modified by LC/30

Article 35 - Mutual Liability

New Title – LC/30

1. The acts and omissions of the actual carrier and of ~~his~~ its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

Guada. III.1
modified by LC/30

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the ~~limits specified~~ amounts referred to in ~~Article 22 of the Warsaw Convention~~ Articles 20, 21 A, 21 B and 21 C of this Convention. ~~Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.~~

Guada. III.2
modified by LC/30
refined by SGMW

Article 36 - Addressee of Complaints and Instructions

New Title – LC/30

Any complaint to be made or ~~order~~ instruction to be given under ~~the Warsaw~~ this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, ~~orders~~ instructions referred to in ~~Article 12 of the Warsaw Convention~~ Article 11 of this Convention shall only be effective if addressed to the contracting carrier.

Guada. IV
modified by LC/30

Article 37 - Servants and Agents

New Title – LC/30

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

Guada. V
modified by LC/30
refined by SGMW

Article 38 - Aggregation of Damages — New Title – LC/30

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within ~~the scope of his~~ their scope of employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to ~~him~~ that person. — Guada. VI modified by LC/30 refined by SGMW

Article 39 - Addressee of Claims — New Title – LC/30

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

Article 40 - Additional Jurisdiction — New Title – LC/30

Any action for damages contemplated in Article ~~VII of this Convention~~ 39 must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in ~~Article 28 of the Warsaw~~ 27 of this Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has ~~his~~ its principal place of business. — Guada. VIII modified by LC/30

Article 41 - Invalidity of Contractual Provisions — New Title – LC/30

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this ~~Convention~~ Chapter or to fix a lower limit than that which is applicable according to this ~~Convention~~ Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this ~~Convention~~ Chapter. — Guada. IX.1. modified

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried. — Guada. IX.2

Article 42 - Mutual Relations of Contracting and Actual Carriers — New Title – LC/30

Except as provided in Article ~~VII~~ 39, nothing in this ~~Convention~~ Chapter shall affect the rights and obligations of the ~~two~~ carriers between themselves, including any right of recourse or indemnification. — Guada. X modified by LC/30

Chapter VI

Final Provisions

Article 43 - Mandatory Application

New Title – LC/30

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. ~~Nevertheless for the carriage of goods 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.~~

W.32 redrafted

Article 44 – repositioned and renumbered as Article 22 A

Article 45 - Insurance

New Title – LC/30

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

New Text
SGMW

Article 46 - Carriage Performed in Extraordinary Circumstances

New Title – LC/30

The provisions of Articles 3 to ~~8~~ 7 inclusive relating to ~~documents~~ the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of ~~an air~~ a carrier's business.

MP4.XIII
modified by LC/30

Article 47 - Definition of Days

New Title – LC/30

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

W.35 modified

~~[~~Article 48 - Reservations[5]

New Title – LC/30

No reservation may be made to this ~~Protocol~~ Convention except that a State may at any time declare by a notification addressed to the ~~Government of the People's Republic of Poland~~ Depositary that ~~the Convention as amended by this Protocol~~ this Convention shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.~~]~~

H. XXVI
modified by LC/30
SGMW

[Final clauses to be inserted]

[5]This Article is without prejudice to any other reservation which the Diplomatic Conference might wish to consider.

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DCW Doc No. 5
26/3/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

FINAL CLAUSES

(Presented by the Secretariat)

The Report of the Special Group on the Modernization and Consolidation of the "Warsaw System" (SGMW/1) had set out in its Appendix 6 a proposed text for Final Clauses, which was based on a proposal from the United Kingdom contained in SGMW-WP/23.

Subsequently, as a result of consultations with the United Kingdom and other delegations, the Secretariat has developed a number of modifications, most of which are editorial, to the text of the proposed Final Clauses. The revised text follows and a reference text indicating the modifications appears in the **Attachment**.

Chapter VII

Final Clauses

Article 49 - Ratification

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accept, approve of or accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated the Depositary.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession with the Depositary.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession. The Depositary shall accept the deposit of such an instrument from any State referred to in paragraph 4 of Article 51 only if he is satisfied that that State has given the requisite notices of denunciation referred to in that paragraph, or is giving such notices at the time of deposit.

5. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 50;

(f) the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession;

(g) the date he gives the notices of denunciation referred to in paragraph 3 of Article 51.

Article 50 - Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 51 - Relationship with other Warsaw Convention Instruments

1. This Convention shall prevail over any rules which apply to international carriage by air:

(1) between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Signed at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier* Signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocols Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol done at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

(2) within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

2. Not less than sixty days after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, each of the States Parties shall give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a party to one or more of those instruments.

3. The Depositary is hereby deemed to be authorized to act on behalf of the States Parties referred to in paragraph 2 of this Article to serve the notices of denunciation there referred to.

4. Any State wishing to become a Party to this Convention after the date of service of the notices of denunciation referred to in paragraph 2 or 3 of this Article shall, at the time of depositing its instrument of ratification, acceptance or approval of, or accession to, this Convention, give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a party to one or more of those instruments, or shall demonstrate to the Depositary that it has done so.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

[SIGNATURES]

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ATTACHMENT

Chapter VII

Final Clauses

Article 49 - Ratification

1. This Convention shall be open for signature in Montreal on ~~xxxx (*insert end date of conference*)~~ 28 May 1999 by States participating in the International ~~Diplomatic~~ Conference on Air ~~Carrier Liability~~ Law ~~(*or insert other title of the intended diplomatic conference*)~~ held at Montreal from ~~xxxx (*insert first date of conference*) to xxxx (*insert end date of conference*)~~ 10 to 28 May 1999. After ~~(*insert end date of conference*)~~ 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accept, approve of or accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated the Depositary.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession with the Depositary.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession, ~~provided that the~~ The Depositary shall ~~not~~ accept the deposit of such an instrument from any State referred to in paragraph 4 of Article 51 ~~unless~~ only if he is satisfied that that State has given the requisite notices of denunciation referred to in that paragraph, or is giving such notices at the time of deposit.

5. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 50;

(f) the date of deposit of the ~~fortieth~~ fiftieth instrument of ratification, acceptance, approval or accession;

~~(g) the date when the States Parties to this Convention comprise not less than [40%] of the total scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization for the year 1998; and~~

(~~h~~g) the date he gives the notices of denunciation referred to in paragraph 3 of Article 51.

Article 50 - Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 51 - Relationship with other Warsaw Convention Instruments

1. This Convention shall prevail over any rules which apply to international carriage by air ~~between States Parties to this Convention or within the territory of any single State Party to this Convention if there is an agreed stopping place within the territory of another State by virtue of those States commonly being Party to~~

(1) between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* ~~signed~~ Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929* ~~signed~~ Signed at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier* ~~signed~~ Signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* ~~signed~~ Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) ~~*Additional Protocol No. 1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929* signed at Montreal on 25 September 1975 (hereinafter called the Montreal Additional Protocol No. 1);~~ Additional Protocols Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Done at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols), or

~~(f) *Additional Protocol No. 2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* signed at Montreal on 25 September 1975 (hereinafter called the Montreal Additional Protocol No. 2);~~

~~(g) *Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocols Done at The Hague on 28 September 1955 and at Guatemala City on 8 March 1971* signed at Montreal on 25 September 1975 (hereinafter called the Montreal Additional Protocol No. 3); and~~

~~(h) *Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* signed at Montreal on 25 September 1975 (hereinafter called Montreal Protocol No. 4).~~

~~Provided that nothing in this paragraph shall apply where, in the case of international carriage by air within the territory of a State Party to this Convention if there is an agreed stopping place in the territory of another State, that other State is not a Party to this Convention but in common with that State Party to this Convention is a Party to one or more of the instruments referred to in sub-paragraphs (a) to (h) above.~~

(2) within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

2. Not less than sixty days after the deposit of the ~~[fortieth]~~ fiftieth instrument of ratification, acceptance, approval or accession, ~~or such greater number of States Parties as is necessary to ensure that the States Parties represent at least [40%] of the total international scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998,~~ each of the States Parties shall give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and ~~each of~~ the Montreal ~~Additional~~ Protocols insofar as it is a Party to one or more of those instruments.

3. The Depositary is hereby deemed to be authorized to act on behalf of the States Parties referred to in paragraph 2 of this Article to serve the notices of denunciation there referred to.

4. Any State wishing to become a Party to this Convention after the date of service of the notices of denunciation referred to in paragraph 2 or 3 of this Article shall, ~~first give the requisite notice to denounce the Warsaw Convention, the Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and each of the Montreal Additional Protocols and Montreal Protocol No. 4 insofar as it is a Party to one or more of those instruments, and shall demonstrate to the Depositary that it has done so when~~ at the time of depositing

its instrument of ratification, acceptance or approval of, or accession to, this Convention, give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a Party to one or more of those instruments, or shall demonstrate to the Depositary that it has done so.

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

DONE at Montreal on the ~~xx~~ 28th day of ~~xxxx~~ May of the year one thousand nine hundred and ~~xxxx~~ ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal ~~Additional~~ Protocols. ~~and Montreal Protocol No. 4~~.

[SIGNATURES]

- END -

DCW Doc No. 6
26/3/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

BACKGROUND INFORMATION ON THE SPECIAL DRAWING RIGHT (SDR)

(Presented by the Secretariat)

1. INTRODUCTION

1.1 The Special Group on the Modernization and Consolidation of the Warsaw System (SGMW/1 Report, paragraph 3:9 refers), requested the Secretariat to provide background information on the Special Drawing Right (SDR), including the effects of inflation on the SDR since 1975.

1.2 This working paper is presented in response to this request.

2. SPECIAL DRAWING RIGHTS

2.1 The Special Drawing Right (SDR) is an international reserve asset created by the International Monetary Fund (IMF) in 1969 to supplement members' existing reserve assets (official holdings of gold, foreign exchange, and reserve positions in the IMF).

2.2 The SDR serves as the IMF's unit of account and is used for IMF transactions and operations. It also serves as a basis for the unit of account for a number of other international organizations and as a denominator for private financial instruments (private SDR). In addition, as of 31 August 1998, the currencies of four member countries were pegged to the SDR.

3. THE VALUE OF THE SDR

3.1 The value of the SDR is determined on the basis of a basket of currencies. Since 1 January 1981, the SDR basket includes the currencies of the five member countries of the IMF with the largest exports of goods and services during the five-year period preceding the revision (currently the United States, Germany, Japan, France and the United Kingdom). The weight of each currency in the valuation basket reflects its relative importance in international trade and reserves, as measured by the value of exports of goods and services of the country issuing the currency and the balance of the currency held as reserve by members of the Fund.

SDR Valuation Basket: Percentage Weight at Inception				
Currency	1981-1985	1986-1990	1991-1995	1996-2000
U.S. Dollar	42	42	40	39
Deutsche mark	19	19	21	21
Japanese yen	13	15	17	18
French franc	13	12	11	11
Pound sterling	13	12	11	11

3.2 The value of the SDR in U.S. dollar terms is calculated daily as the sum of the values in U.S. dollars, based on the exchange rates quoted at noon in the London market, of specified amounts of these five currencies. As from 1 January 1999, the euro replaced the Deutsche mark and the French franc with a weight equal to the sum of the weights for these two currencies. As a consequence, the SDR valuation basket weights are 39 percent for the U.S. dollar, 32 percent for the euro (in replacement for the 21 percent for the Deutsche mark and 11 percent for the French franc), 18 percent for the Japanese yen, and 11 percent for the Pound sterling. Therefore as from that date, the value of the SDR is the sum of the values of the following amounts of each currency: U.S. dollar, 0.582; euro (German mark), 0.2280; Japanese yen, 27.2; euro (Franch franc), 0.1239; Pound sterling, 0.105.

SDR Valuation on 12 March 1999 *			
Currency	Currency Amount	Exchange Rate **	U.S. Dollar Equivalent
Euro (Germany)	0.2280	1.09360	0.249341
Euro (France)	0.1239	1.09360	0.135497
Japanese yen	27.2000	119.45000	0.227710
Pound sterling	0.1050	1.63240	0.171402
U.S. dollar	0.5821	1.00000	0.582100

SDR1 = US$ 1.36605
U.S. $1.00 = SDR 0.732038

* Figures are based on information provided by the IMF

** Exchange rates in terms of currency units per U.S. dollar, except for the euro and the Pound sterling, which are expressed as U.S. dollars per currency unit.

3.3 The value of the SDR tends to be more stable than that of any single currency in the basket; movements in the exchange rate of any one component currency will tend to be partly or fully offset by movements in the exchange rates of the other currencies.

4. CONVERSION INTO NATIONAL CURRENCIES

4.1 The value for the SDR in terms of other currencies is derived from the market exchange rates of these currencies for the U.S. dollar and the U.S. dollar rate for the SDR. Set out in the Attachment is a table of currency values in terms of the Special Drawing Right (on 12 March 1999).

5. EFFECTS OF INFLATION ON THE SDR

5.1 Pursuant to the request mentioned in paragraph 1.1 above, the Secretariat has carried out a calculation on the loss of purchasing power of the SDR since 1975 based on the change in the weighted average of the Consumer Price Index (CPI) of the five countries included in the currency basket.[1] On this basis, at the end of 1997 the value of the SDR was approximately one third of the value it had in 1975 (i.e. 1 SDR at 1998 value is worth about 0.36 SDR at 1975 value). **In other words, in order to obtain in 1998 the equivalent of 1 SDR at its 1975 value, it would be necessary to increase the limit by a factor of 2.78.**

5.2 It should be recalled that the limits of liability mentioned in Article 21 A, paragraph 2 (for baggage) and Article 21 A, paragraph 3 (for cargo), of the draft Convention are presently set for illustrative purposes at the same levels as contained in Additional Protocol No. 3 and Montreal Protocol No. 4 respectively. Given that these Protocols did not raise the limits of liability established by the Warsaw Convention, but rather modified the method by which these limits are to be calculated, it can be observed that the liability limits for baggage and cargo have virtually remained unchanged in numerical terms since 1975, but have lost almost two-thirds of their value.

5.3 In light of the findings referred to in the two preceding paragraphs, the Conference may wish to review the limits of liability for baggage and cargo.

6. ACTION BY THE CONFERENCE

6.1 The Conference is invited to note this paper and to consider the matter set out in paragraph 5 above, in particular as regards limits of liability for baggage and cargo.

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[1] Please note that before 1981 the SDR was calculated by using a basket of 16 currencies; however for ease of calculation, the weighted CPI for 1975 -1980 is based on the present currency basket in the proportions used from 1981 - 1985.

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ATTACHMENT

CONVERSION OF THE SDR INTO NATIONAL CURRENCIES*

		Currency Units per SDR	SDR per Currency unit
		12 March 1999	12 March 1999
Euro	EUR	1.249590000	0.800264000
Japanese yen	Y	163.4070000	0.006119700
Pounds sterling	LST	0.836835000	1.194980000
U. S. dollars	US$	1.366050000	0.732038000
Argentine pesos	ARG	1.361250000	0.734621000
Australian dollars	$A	2.151600000	0.464771000
Bahrain dinars	BD	0.513635000	1.946910000
Bangladesh taka	TK	66.25340000	0.015093600
Brazilian reals	R$	2.564900000	0.389880000
Canadian dollars	CAN	2.081590000	0.480403000
Colombian pesos	COL	2120.490000	0.000471589
Danish kroner	DKR	9.286130000	0.107687000
Greek drachmas	DR	401.9740000	0.002487730
Icelandic kronur	ISK	98.16440000	0.010187000
Indian rupees	RS	57.96150000	0.017252800
Indonesian rupiah	RP	0.000000	0.000000
Iranian rials	IRL	2390.230000	0.000418370
Iraqi dinars	ID	0.424647000	2.354900000
Korean won	W	1680.650000	0.000595008
Kuwaiti dinars	KD	0.414585000	2.412060000
Libyan dinars	LD	0.634115000	1.577000000
Malaysian ringgit	RIN	5.190990000	0.192642000

* Figures are based on information provided by the IMF

DCW Doc No. 6 A-2
ATTACHMENT

CONVERSION OF THE SDR INTO NATIONAL CURRENCIES*

Maltese liri	LMT	0.000000	0.000000
Nepalese rupees	NRS	92.44740000	0.010817000
New Zealand dollars	$NZ	2.558150	0.390908000
Norwegian kroner	NKR	10.65710000	0.093834200
Omani rials	RO	0.525246	1.903870000
Pakistan rupees	PRS	62.9954	0.015874200
Qatar riyals	QR	4.97242	0.201109000
Saudi Arabian riyals	SRL	5.11586	0.195471000
Singapore dollars	S$	2.373510	0.421317000
South African rand	R	8.440140	0.118482000
Sri Lanka rupees	SLR	94.284800	0.010606200
Swedish kronor	SKR	11.071800	0.090319300
Swiss francs	SWF	2.000440	0.499889000
Thai baht	TB	51.162300	0.019545700
Trinidad & Tobago dollars	TT$	8.585210	0.116479000
U.A.E. dirhams	UAE	5.016820	0.199330000
Venezuelan bolivares	BS	788.55700	0.001268140

* Figures are based on information provided by the IMF

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DCW Doc No. 7
26/3/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

NUCLEAR DAMAGE

(Presented by the Secretariat)

1. INTRODUCTION

1.1 During the 30th Session of the ICAO Legal Committee, the ICAO Secretariat was requested to provide an information paper on the subject of "nuclear damage" for the Diplomatic Conference, in order to clarify the relationship between the *Draft Convention for the Unification of Certain Rules for International Carriage by Air* and existing treaty instruments governing civil liability for nuclear damage (Report of the 30th Session of the Legal Committee, Doc 9693–LC/190, paragraph 4:238 refers). This request was made in connection with a working paper submitted by the Kingdom of the Netherlands (LC/30-WP/4-7 refers).

1.2 The present paper is presented in response to the above-mentioned request.

2. LIABILITY REGIME REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE

2.1 The international legal framework regarding civil liability for nuclear damage is embodied primarily in two instruments, namely, the *Vienna Convention on Civil Liability for Nuclear Damage*, done in Vienna on 21 May 1963 (the "Vienna Convention") and the *Convention on Third Party Liability in the Field of Nuclear Energy*, done in Paris on 29 July 1960 (the "Paris Convention"), linked by the *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention*, done in Vienna on 21 September 1988 (the "Joint Protocol"). The Vienna Convention, which entered into force on 12 November 1977, is global in nature and presently has 31 States Parties. The Paris Convention, concluded within the framework of the OECD, is regional in character and has 14 European States as Parties; it entered into force on 1 April 1968. The Joint Protocol entered into force on 27 April 1992 and has 20 States Parties. It establishes a link between the above-mentioned conventions combining them into one expanded liability regime. Parties to the Joint Protocol are treated as though they are Parties to both conventions and a choice of law rule is provided to determine which of the two conventions should apply, to the exclusion of the other, in respect of the same incident.

2.2 Notwithstanding the following observations regarding the potential overlap of legal instruments, it should be mentioned that the majority of radioactive material shipments by air involve substances which are being used for medical or industrial purposes. These substances, however, are not considered to be "nuclear material" or "radioactive products or waste" for the purposes of the above-mentioned

conventions since these terms cover only materials or products or waste arising from the process of producing or utilizing nuclear fuel, and are thus part of the nuclear fuel cycle (Vienna Convention, Article I, paragraphs (g) and (h); Paris Convention Article 1, paragraphs (iii) and (iv) refer). Therefore damage caused by substances which are being used for medical or industrial purposes do not fall within the ambit of the "nuclear conventions".

3. POTENTIAL OVERLAP OF INTERNATIONAL LEGAL INSTRUMENTS

3.1 The principle established pursuant to the above-mentioned Conventions provides that the operator of a nuclear installation in a Contracting State from, or in certain cases to, which the nuclear (fuel) material was being carried (including the carriage by air), shall be strictly and solely liable for nuclear damage caused by a nuclear incident occurring in the course of the carriage (Vienna Convention, Article II and Paris Convention, Article 4 refer). Further, both Conventions stipulate that, if so provided by the national legislation of a Contracting Party, a carrier of nuclear material may be considered under certain circumstances as an operator of a nuclear installation in that State (Vienna Convention, Article II (2) and Paris Convention, Article 4 (d) refer). Based on information which has been received by the Secretariat, certain States may have passed such legislation.

3.2 The term "nuclear damage", *inter alia,* comprises:

> "Loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation" (Vienna Convention, Article I (k) refers).

3.3 "Nuclear incident" is defined as any occurrence or series of occurrences having the same origin which causes nuclear damage (Vienna Convention, Article I (l) refers).

3.4 In case of a crash or an emergency landing of an aircraft engaged in "international transportation" and carrying nuclear material, it is conceivable that, upon impact, a surviving passenger may suffer "nuclear damage" (i.e. injurious radiation), in case radioactivity has been emitted. It is similarly conceivable that radioactivity is emitted due to the improper or defective packaging of the said nuclear material and the passenger is exposed to injurious radiation during the carriage by air. To this end, it is relevant to note Article IV (4), first sentence of the Vienna Convention (a similar provision is contained in Article 3 (b), first sentence of the Paris Convention), which provides:

> "Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by that nuclear incident."

3.5 Insofar as nuclear damage mentioned above coincides with the "bodily injury" referred to in Article 16 of the Draft Convention, the application of the "nuclear conventions" appears to overlap at least partly with the draft convention. In this context, reference is made to Article II (5) of the Vienna Convention (a similar provision can be found in Article 6 (b) of the Paris Convention) which reads:

> "Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature."

The provisions referred to above have been adopted on the assumption that nuclear damage will be exempted from the scope of application of any convention in the field of transport which is concluded **after** the date on which the Paris or the Vienna Convention, respectively, was opened for signature. The Conference may therefore wish to consider the method by which this partial overlap should be resolved, in order to reconcile the treaty obligations of States which are, or intend to become, Parties to the nuclear conventions, and which also intend to become a party to the Draft Convention as these States would not be in a position to apply the principles laid down in the nuclear conventions, in cases where the carrier is liable under the Draft Convention.

3.6 Other transport conventions adopted after the date the nuclear conventions have been concluded, for example the *Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea*, signed on 13 December 1974, have dealt with the issue by means of a "nuclear damage" clause, by virtue of which the application of the transport convention for damage caused by a nuclear incident is excluded. Similarly, the transport convention also shall not apply if the operator of a nuclear installation is liable for nuclear damage by virtue of a national law governing the liability for such damage. The wording of Article 20 (Nuclear damage) of the *Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea*, signed on 13 December 1974, is set out for information in the **Attachment**.

3.7 The Conference may wish to consider incorporating a similar clause or take alternative action, as deemed appropriate.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to note this paper and to decide on an appropriate course of action.

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ATTACHMENT

Article 20 of the *Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea*

"Nuclear damage

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

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

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

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DCW Doc No. 8
30/4/99
English & French only

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

Agenda item 9 : Consideration of the draft Convention

ECAC'S COMMENTS ON THE DRAFT CONVENTION

(Presented by 37 Contracting States[1],
Members of the European Civil Aviation Conference)

SUMMARY

This information paper, produced in close co-operation with the European Community, expresses the full support of the 37 Contracting States, Members of the European Civil Aviation Conference (ECAC), for the modernization of the Warsaw system undertaken by ICAO, with a view to developing a uniform system with improved protection of victims of air transport accidents. It contains the general comments of ECAC Member States on the draft Convention.

Introduction

1. The 37 Members of the European Civil Aviation Conference agree unanimously that there is a need to update the liability system of the Warsaw Convention, and welcome the initiative undertaken by ICAO to modernize the Warsaw system.

(2 pages)

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[1] Albania, Armenia, Austria*, Belgium*, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark*, Estonia, Finland*, France*, Germany*, Greece*, Hungary, Iceland, Ireland*, Italy*, Latvia, Lithuania, Luxembourg*, Malta, Moldova, Monaco, Netherlands*, Norway, Poland, Portugal*, Romania, Slovak Republic, Slovenia, Spain*, Sweden*, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom* (Member States of the European Community are indicated with an asterisk).

2. ECAC is convinced that the current system is no longer acceptable, *inter alia* because of its lack of uniformity and low levels of compensation limits which are detrimental to the victims of air transport accidents and their next-of-kin. ECAC has a keen interest, and played a pioneering role on the issue of the modernization of the Warsaw Convention. In 1994, the sixteenth Plenary Session of ECAC adopted Recommendation ECAC/16-1 on air carriers' liability with respect to passengers, and this was a decisive step in the right direction. While adopting this Recommendation, ECAC had urged the updating of certain elements of the air carriers' liability system in such a way as to be binding under the law of international treaties, with a view to having a universal and mandatory system.

General Comments on the Draft Convention for the Unification of Certain Rules for International Carriage by Air

3. ECAC Member States have undertaken a comprehensive review of the draft Convention for the unification of certain rules for international carriage by air, and offer the following comments.

4. ECAC supports the draft Convention as generally being an adequate response to the concerns of its Member States. The draft Convention, which consolidates and modernizes international law in the field of aviation in the interests both of air transport users and of air carriers, is considered to be compatible with ECAC Recommendation ECAC/16-1, the intercarrier agreements which proceeded from it, and in many respects with the European Community legislation (Council Regulation (EC) No. 2027/97 of 9 October 1997).

5. ECAC completely endorses the fundamental element of the updated revised Convention, aiming at creating a uniform and universal system, i.e. **Article 20 on compensation in case of death or injury of passengers**, providing for a two-tier liability regime in case of accidental death or injury of passengers, with a first tier providing for strict liability up to 100 000 SDR and a second tier for claims above that level, in which a regime of fault-based liability applies without numerical liability limits and with the burden of proof placed on the air carrier. ECAC Member States consider that any other "burden of proof" regime should guarantee passengers an effective right of compensation.

6. ECAC Member States, however, regret the absence of provisions on an advance or upfront payment to the victims of air accidents or their next-of-kin.

7. ECAC Member States will contribute positively, during the Diplomatic Conference, in an effort to ensure the overall success of the revised Convention.

– END –

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

Agenda item 9 : Consideration of the draft Convention

Provisions of the ICAO Draft Convention for the Unification of Certain Rules for International Carriage by Air Related to Cargo

(Presented by the International Air Transport Association – IATA)

1. This paper sets forth the comments and proposed revisions developed by the International Air Transport Association ("IATA") on certain provisions (those related to Cargo) of the draft Convention to be considered at the ICAO Diplomatic Conference on airline liability due to convene 10 May 1999 in Montreal. IATA will make comments on additional provisions at such time as they are considered on the floor of the Diplomatic Conference.

Article 2.2

2. This Article reads: "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. IATA believes there is uncertainty as to the meaning of this provision. It is unclear whether the import is that liability on the part of the carrier is exclusively to the relevant postal administration, as distinguished from the sender of the postal items; or whether the provision means that liability by the carrier to the relevant postal administration only arises to the extent provided in the applicable rules. IATA therefore recommends that this provision be clarified and rephrased accordingly. IATA also recommends the addition of a definition of the term "postal item."

Article 4.2

4. This Article provides for carriers to deliver to the consignor, in instances where no waybill is issued, "a receipt for the cargo." However, throughout the remainder of the Convention text, the term "cargo receipt" is utilised, as distinguished from "receipt for the cargo" although the references would appear to be to the same receipt described in 4.2. In the interest of clarity and consistency, IATA recommends referring in 4.2 to "a cargo receipt" instead of "a receipt for the cargo." Thus, the second sentence of this provision would read: "If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt ~~for the cargo~~ permitting identification of the consignment and access to the information contained in the record preserved by such other means."

5. IATA also recommends the commentary accompanying the Convention should clarify that the "cargo receipt" may consist of an electronic record and need not be a paper document, as in practice many shippers and carriers will prefer that this receipt be transmitted by electronic means. IATA presumes there is no reason the drafters of the Convention would want to preclude such use of electronic technology and that it would be ironic that in order to eliminate a paper waybill, a paper receipt would have to be issued. Moreover, this clarification would be consistent with the principle that there shall henceforth be two alternative means of processing cargo transportation: paper air waybill, or electronic.

Article 6

6. IATA submits that a number of substantive changes could be made to this Article to bring it into line with current practical requirements for doing business from both the carriers' and shippers' perspectives, and to more fully conform it to the new regime which allows for electronic documentation of cargo transportation.

7. Basically, IATA believes (1) this Article should make clear it applies only when the parties opt to utilise a paper air waybill as contemplated in 4.1, rather than an electronic record as contemplated in 4.2; (2) that only two copies of an air waybill, rather than three, are required; (3) that the designation of one copy of the air waybill for the carrier and one for the shipper can be satisfactorily expressed with less verbiage; and (4) that if the carrier and shipper agree to effect their signatures by some means other than printing or stamping (e.g., an "electronic" signature), that presumably there is no reason the Convention should prevent them from so doing.

8. The revised Article 6 would read as follows:

Article 6 – Description of Air Waybill

1. When, pursuant to 4.1, an air waybill is used, it shall be made out by the consignor in two original parts, each of which shall be signed by the consignor and the carrier.

2. Each party shall retain one original of the air waybill.

3. The signature of the carrier and that of the consignor may be printed or stamped, or in such other form as may be agreed between the parties.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

9. IATA proposes amending the caption by deleting the words "Documentation of." Thus, the caption would simply read: "Multiple Packages." This change is proposed because it was felt the words "Documentation of" were unnecessary in the caption, and could be misconstrued as being inconsistent with the clear implication in the substantive content of Article 7, that use of electronic technology is a fully acceptable substitute for paper documentation.

Article 8

10. IATA proposes two editorial changes to this Article, as follows:

Article 8 – Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 7 inclusive shall not affect the existence or the validity of the contract of carriage, ~~which~~ and the carriage shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

11. Addition of the word "inclusive" is intended as a clarification of what IATA understands to be the existing intent reflected in the draft. The second change, replacement of the word "which" with the phrase "and the carriage" is intended to clarify that it is actually the carriage, as distinguished from the contract of carriage, which should remain subject to the rules of the Convention, notwithstanding any non-compliance with Articles 4 to 7.

Article 10

12. In Article 10.1, since the conditions of carriage are actually incorporated by reference and not merely mentioned in the air waybill or cargo receipt, IATA proposes replacing the word "mentioned" with the phrase "incorporated by reference," in describing the connection between the conditions of carriage and the air waybill or cargo receipt.

13. In addition, IATA noted that the French-language version of the Convention uses the word "et" which is the equivalent of the word "and" instead of the word "ou" which would be the equivalent of the word "or" which appears in the first line of Article 10.1 of the English-language version of the Convention. IATA understands the Convention to intend that, in the case of a transaction documented via a paper air waybill, the air waybill shall serve as *prima facie* evidence of the conclusion of the contract, while in the case of a transaction handled electronically, the cargo receipt shall serve as such evidence. Thus, the use of the word "or" in the English-language text seems appropriate and no change is required. However, it may be desirable to amend the French-language version, to replace "et" with "ou" to avoid any possible ambiguity.

Article 11

14. IATA proposes, in Article 11.2, changing the word "impossible" to the phrase "reasonably impractical." This is proposed because the term "impossible" may be interpreted as creating such a high standard as to render this provision inapplicable to many situations which IATA believes the drafters would have intended to have covered with this clause.

15. In addition, IATA proposes to clarify Article 11.4 with the following amendment:

4. The right conferred on the consignor ceases at the moment when ~~that of~~ the cargo is delivered to the consignee ~~begins in accordance with Article 12~~. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

16. IATA is concerned that the existing wording of the draft creates uncertainty for all parties in the event cargo had arrived at the destination airport, and thus was deliverable to the consignee pursuant to Article 12, but had not yet actually been delivered by the carrier. If the consignor, at that point in time, wished for the goods to be delivered to a different consignee (*e.g.* due to nonpayment by the original consignee or otherwise), it would still be possible for the carrier to honour such a change in instructions. However, this

provision might be interpreted to imply that once the goods had arrived at the destination airport, the right of the original consignee to delivery had become absolute and the right of the consignor to change its original delivery instructions had lapsed, and thus, if the carrier were to honour such a change in delivery instructions, it would be acting inconsistently with the Convention. To resolve this uncertainty for consignors, consignees, and carriers, and to avoid imposing unnecessary uncertainty on carriers as to whether or not they are in a position to honour changes to delivery instructions once the goods have reached the destination airport, IATA proposes the clarification set forth above.

Article 12

17. IATA proposes that, in Article 12.2, the phrase "between the consignor and the carrier" be inserted after the word "agreed" simply to make explicit what already appears to be the implicit intention of this provision.

Article 15

18. In the second sentence of Article 15.1, IATA proposes that the words "loss or" be inserted before the word "damage" each of the two times the word "damage" appears. No substantive change is intended, but merely a clarification that this provision intends to secure reimbursement for both losses and damages, given that under the legal systems of certain countries, "losses" and "damages" are not necessarily synonymous.

Article 17

19. Article 17.4 appears to differentiate between carriage by land performed within an airport perimeter, which would be covered by the Convention, and carriage extending beyond the perimeter, which would not. IATA notes that at a number of airports, there is no space available within the perimeter for construction of warehouses, and it is sometimes essential to transfer cargo by road to warehouses situated nearby but not technically on airport property. IATA questions whether there is any reason the applicable liability regime should differ, depending on whether it became necessary to make use of such off-airport warehouses, particularly given the statement in 17.3, that the term "carriage by air" is generally intended to comprise the period the cargo "is in the charge of the carrier." Since cargo transferred to and from an off-airport warehouse nevertheless remains "in the charge of the carrier" at all such times, it is not apparent why a different liability regime should apply to such shipments. To resolve this concern, IATA proposes that the phrase "performed outside an airport" be deleted from the first sentence of Article 17.4.

20. In addition, the last sentence of Article 17.4 sets forth certain exceptions where carriage of cargo by a mode of transport other than air is nevertheless deemed to be within the period of carriage by air, and is thus covered by the Convention. The existence of such exceptions creates an apparent inconsistency with Article 1.1, which states that the Convention applies to carriage "performed by aircraft for reward." To resolve this inconsistency, IATA proposes to insert the phrase "Notwithstanding the provisions of Article 1 and the foregoing provisions of Article 17.4" at the beginning of the last sentence of Article 17.4.

21. IATA also questions the limitation specified in the final sentence of Article 17.4, that carriage by another mode of transport is covered by the Convention only if it is "substitute[d]" and only if it is performed "without the consent of the consignor." Given the prevalence of intermodal transport arrangements offered by the air transport industry, which sometimes are offered with the consent of the consignor, sometimes are unknown to the consignor, and sometimes may vary depending on the day of the week the shipment happens to be transported or other such factors, IATA believes it would be desirable to delete this limitation. IATA's

view is that shippers who tender cargo to an air carrier for transport will typically understand that the Convention will apply to such carriage, and in the interest of clarity and consistency, IATA believes that extending the purview of the Convention to all such carriage is in the interest of all concerned. Thus, in the final sentence of Article 17.4, in lieu of the current wording "without the consent of the consignor, substitutes" IATA proposes to insert the words "elects to provide."

22. The following reflects the three changes proposed to Article 17.4, as described above:

> 4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway ~~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 transhipment, 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. Notwithstanding the provisions of Article 1 and the foregoing provisions of Article 17.4, if ~~If~~ a carrier, ~~without the consent of the consignor, substitutes~~ elects to provide carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 21A

23. IATA proposes that, in 21A.5, the reference to paragraph 3 of Article 21A be deleted. IATA notes that one of the significant achievements contained in Montreal Protocol No. 4 was to introduce unbreakable limits with respect to cargo. This was done in recognition that most cargo shippers tend to be sophisticated commercial enterprises. IATA is concerned that reintroducing the concept of breakable limits for cargo would lead to costly and unproductive litigation, which otherwise could be avoided. Ultimately, the only question to be settled through such litigation is whether the air carrier's insurer, or the shipper's insurer, must pay for the damages. Accordingly, in the interest economic efficiency, IATA believes it would be desirable to retain the "unbreakable limits" approach contained in Montreal Protocol No. 4.

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ATTACHMENT

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

[As approved by the Special Group on the Modernization and Consolidation of the "Warsaw System", which met in Montreal from 14 to 18 April 1998]

THE STATES PARTIES TO THIS CONVENTION;

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 - Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State 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 carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 - Carriage Performed by State - Postal Items

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 - Passengers and Baggage

1. In respect of carriage of passengers an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written 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, this Convention may be applicable and that the Convention governs and in some cases limits the liability of carriers for death or injury, destruction or loss of, or damage to baggage, and delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 - Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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 cargo receipt ~~for the cargo~~ permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 - Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 nature and weight of the consignment.

Article 6 - Description of Air Waybill

24. ~~The air waybill shall be made out by the consignor in three original parts.~~ When, pursuant to 4.1, an air waybill is used, it shall be made out by the consignor in two original parts, each of which shall be signed by the consignor and the carrier.

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 by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.~~ Each party shall retain one original of the air waybill.

3. The signature of the carrier and that of the consignor may be printed or stamped, or in such other form as may be agreed between the parties.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7 - Documentation of Multiple Packages

When there is more than one package:

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 8 - Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 7 inclusive shall not affect the existence or the validity of the contract of carriage, ~~which~~ and the carriage shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

Article 9 - Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 10 - Evidentiary Value of Documentation

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage ~~mentioned~~ incorporated by reference therein.

2. Any statements in the air waybill or the cargo receipt 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 nature, 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 it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 11 - Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is ~~impossible~~ reasonably impractical to carry out the instructions of the consignor the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

4. The right conferred on the consignor ceases at the moment when ~~that of~~ the cargo is delivered to the consignee ~~begins in accordance with Article 12~~. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 12 - Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 11, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed ~~between the consignor and the carrier~~, 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 or consignor is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 13 - Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 11 and 12, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 14 - Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 11, 12 and 13 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 11, 12 and 13 can only be varied by express provision in the air waybill or the cargo receipt.

Article 15 - Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any loss or damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the loss or damage is due to the fault of the carrier, its 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 and Extent of Compensation for Damage

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable to the extent that the death or injury resulted from the state of health of the passenger.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 17 - Damage to Cargo

1. 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 event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway ~~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 transhipment, 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. Notwithstanding the provisions of Article 1 and the foregoing provisions of Article 17.4, ~~if~~ a carrier, ~~without the consent of the consignor, substitutes~~ elects to provide carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 18 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage, or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 19 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.

Article 20 - Compensation in Case of Death or Injury of Passengers

The carrier shall not be liable for damage arising under paragraph 1 of Article 16 which exceeds for each passenger 100 000 SDR if the carrier proves that:

(a) the carrier and its servants and agents had taken all necessary measures to avoid the damage; or

(b) it was impossible for the carrier or them to take such measures; or

(c) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 21 A - Limits of Liability

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons the liability of the carrier for each passenger is limited to [4 150][1] Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to [1 000][1] Special Drawing Rights for each passenger unless the passenger has made, at the time when checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of [17][2] Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of loss, damage or delay of part of the 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 cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1, and 2 ~~and 3~~ of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its 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 such servant or agent was acting within the scope of its employment.

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[1] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

[2] This figure is taken from Montreal Protocol No. 4 and is used for illustrative purposes only.

6. The limits prescribed in Article 20 and 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, including interest. 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.

Article 21 B - Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 the judgment. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect 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 State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 20 is fixed at a sum of [1 500 000][3] monetary units per passenger in judicial proceedings in their territories: [62 500][3] monetary units per passenger with respect to paragraph 1 of Article 21 A; [15 000][3] monetary units per passenger with respect to paragraph 2 of Article 21 A; and [250][3] monetary units per kilogramme with respect to paragraph 3 of Article 21 A. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 20, 21 A, 21 B and 21 C as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

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[3] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

Article 21 C - Review of Limits

1. Without prejudice to the provisions of Article 21 D of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Article 20 and Articles 21 A and B shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 21 B.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 21 D - Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 22 - Invalidity of Contractual Provisions

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

Article 22 A - Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from making advance payments based on the immediate economic needs of families of victims or survivors of accidents, from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

Article 23 - Basis of Claims

In the carriage of passengers, baggage, and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 24 - Servants, Agents - Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if he or she proves that he or she acted within the scope of his or her employment, shall be entitled to avail himself or herself of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 25 - Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in Article 3, paragraph 2, and Article 4, paragraph 2.

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or despatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 26 - Death of Person Liable

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 or her estate.

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or in the territory of a State Party:

(a) in which at the time of the accident the passenger has his or her principal and permanent residence; and

(b) to or from which the carrier actually or contractually operates services for the carriage by air; and

(c) in which that carrier conducts its business of carriage by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. In this Article, "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision or marketing of their joint services for carriage by air.

[3 *bis*. At the time of ratification, adherence or accession, each State Party shall declare whether the preceding paragraph 2 shall be applicable to it and its carriers. All declarations made under this paragraph shall be binding on all other States Parties and the depositary shall notify all States Parties of such declarations.]

4. Questions of procedure shall be governed by the law of the Court seised of the case.

Article 28 - Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 27.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 29 - Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of 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 that period shall be determined by the law of the Court seised of the case.

Article 30 - Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier who accepts passengers, baggage or cargo is subject to the rules set out in this Convention, and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her, 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 31 - Right of Recourse against Third Parties

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

Combined Carriage

Article 32 - Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 17, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 33 - Contracting Carrier - Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 34 - Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article 33, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which it performs.

Article 35 - Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 20, 21 A, 21 B and 21 C of this Convention.

Article 36 - Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 11 of this Convention shall only be effective if addressed to the contracting carrier.

Article 37 - Servants and Agents

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

Article 38 - Aggregation of Damages

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

Article 39 - Addressee of Claims

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

Article 40 - Additional Jurisdiction

Any action for damages contemplated in Article 39 must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 27 of this Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has its principal place of business.

Article 41 - Invalidity of Contractual Provisions

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Chapter.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

Article 42 - Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 39, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Final Provisions

Article 43 - Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 44 – repositioned and renumbered as Article 22 A

Article 45 - Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 46 - Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 7 inclusive relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 47 - Definition of Days

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

Article 48 - Reservations[4]

No reservation may be made to this Convention except that a State may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

[Final clauses to be inserted]

– END –

[4] This Article is without prejudice to any other reservation which the Diplomatic Conference might wish to consider.

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DCW Doc No. 10
4/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON THE DRAFT TEXT APPROVED BY THE 30TH SESSION OF THE ICAO LEGAL COMMITTEE AS AMENDED BY THE SPECIAL GROUP ON THE MODERNIZATION AND CONSOLIDATION OF THE "WARSAW SYSTEM" (SGMW)

ARTICLE 16, PARAGRAPH 1, FIRST SENTENCE

(Presented by Norway and Sweden)

1. Proposal

1.1 It is proposed that the words "or mental" be added to the first sentence of Article 16, paragraph 1:

> "1. The carrier is liable for damage sustained in case of death or bodily **or mental** injury of a passenger upon condition only that the accident which caused the death or injury..."

2. Reason

2.1 The original Warsaw Convention expressly covered only "bodily injury" (lésion corporelle). This concept was changed by the Guatemala Protocol to "personal injury". Following that amendment the argument was raised that the concept of personal injury was too broad. The Legal Committee (LC/30) found an eminent compromise between these opposites: "bodily and mental injury". This solution was however altered by the Special Group on the Modernization and Consolidation of the "Warsaw System" (SGMW). The result of the proposal is that the text returns to the fair and reasonable solution of LC/30.

2.2 The main reason why it is important that the new Convention expressly provides for compensation in case of mental injury, is that the effect of a mental injury can be as serious as that of a bodily injury. It would be unfair if two persons who are both disabled to the same extent as a result of an accident, receive different compensation just because one of them is mentally injured.

2.3 Furthermore, the present draft will discriminate between different victims. The risk of mental injury is higher for children and young persons. The reason for this is that a person uses his experience to deal with a trauma, which means that adults can more easily overcome trauma as they have more experience. The exclusion of mental injuries will thus entail a Convention, that gives different protection to different categories of passengers.

2.4 The exclusion of mental injury does not promote unification of legal systems, which is one of the main objectives of this process. The reason for this is that the term "bodily injury" is not construed in the

same way in all legal systems. The present draft will therefore lead to different interpretation of the Convention in different stares. As a result the present draft may give rise to forum shopping.

2.5 It must be recognised that it is sometimes difficult to determine whether a person suffers from a mental injury or not. However, the burden of proving the existence of a damage lies with the passenger. Therefore the difficulties in proving mental injuries will not impose any extra burden on the carriers.

– END –

DCW Doc No. 11
4/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON THE DRAFT TEXT APPROVED BY THE 30TH SESSION OF THE ICAO LEGAL COMMITTEE AS AMENDED BY THE SPECIAL GROUP ON THE MODERNIZATION AND CONSOLIDATION OF THE "WARSAW SYSTEM" (SGMW)

ARTICLE 16, PARAGRAPH 1, LAST SENTENCE

(Presented by Norway and Sweden)

1. Proposal

1.1 It is proposed that the last sentence of Article 16, paragraph 1, be deleted.

2. Reason

2.1 The original Warsaw Convention, which made carriers liable in case of *accidents*, had no qualification concerning the state of health of the passenger. In the Guatemala City Protocol the basis of liability was broadened to cover *events* - not just accidents. In relation to this amendment, the liability of the carriers was limited in so far as they were not liable in the cases where the damage was *solely* caused by the state of health of the passenger. Since the new Convention returns to the "accident" of the original Warsaw Convention, every reference to the state of health of the passenger should be omitted.

2.2 The combination of "accident" and the limitation that the carrier is only liable to the *extent* that the damage is not caused by the state of health of the passenger, is quite unfair. It favours the carriers unreasonably to the detriment of the passengers.

2.3 Furthermore, the present draft may leave a fairly large group of passengers, including the sick and the handicapped, without protection. If a passenger has a state of health that makes him or her more vulnerable, he or she will not be able to get additional protection through insurance, at least not at any reasonable cost. When the insurer gets to know of the illness or condition the insurer will refuse to sell an insurance or raise the policy. On the other hand, if the illness or condition is concealed, the insurer may refuse to pay compensation or pay a lower amount.

2.4 There is also a considerable risk that the present draft will give rise to a large number of proceedings on the question of to what extent the state of health has contributed to the damages. The cost of such proceedings may be extensive.

2.5 Finally, it is important to take Article 19 on exoneration into account. That Article means, for instance, that if it is regarded as negligent by a sick or disabled passenger to travel by aircraft, the carrier may be exonerated from liability.

– END –

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4/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

ARTICLE 27 – FIFTH JURISDICTION

(Presented by the United States of America)

INTRODUCTION

It has long been the view of the United States that passengers or their heirs who have claims against an airline resulting from an accident in international air transportation should have the right to bring suit in the courts of the State where the passenger lived. The four bases for court jurisdiction under the Warsaw Convention indirectly permit this in most cases. However, in a limited number of cases, the four jurisdictions may not include the passenger's homeland.

The U.S. believes that including the fifth jurisdiction in any new convention represents an essential element in moving forward with a revised convention.

Each State has a significant interest in ensuring that its citizens are ensured access to justice, especially in the event of a severe injury or death of a family member. However, the United States also recognizes that any airline being called in to defend litigation in a particular State should have at least a minimal presence in that State. In the spirit of compromise, and in response to concerns expressed by certain States, the United States has accepted revisions to the proposed fifth jurisdiction such that not all citizens will be protected. Instead, only those meeting the narrower requirements of having their "principal and permanent residence" in the State will be covered. Similarly, representatives of the United States have worked cooperatively with other States to narrow the category of airlines subject to the fifth jurisdiction. The draft convention now requires an airline to have a significant presence in the particular State.

WHY A FIFTH JURISDICTION?

As an issue of fundamental fairness, the U.S. considers it essential that claimants should have the right to bring suit in the passenger's home country. Inclusion of an acceptable fifth jurisdiction provision is essential for U.S. ratification of any new convention, for the following reasons:

- Were it not for the existing Warsaw Convention limitations, the laws of many States (including the United States) would permit a claimant to bring a legal action in the passenger's home State, provided only that the air carrier has a commercial presence in that State. There is no justification for a new convention that continues to deny passengers a right which, in the absence of an international convention, many would otherwise have under the laws of their home States.

- The passenger's home State is where most claimants are located, and that country's courts would usually apply the laws and standards of recovery that would be anticipated by such passengers or claimants.

- The homeland law is the law under which the passenger's estate and insurance plans presumably were made prior to the accident, and the law under which the estate will be probated.

- Moreover, the fairness and adequacy of compensation for tort injuries depends, in large measure, on the court system. The fifth jurisdiction ensures that claimants will be fairly treated and adequately compensated, because they can bring suit in the courts with which they are most familiar.

- Since 1929, the air transport industry has progressed from small, independent airlines offering limited point-to-point service, to large, integrated global networks. Modern air transport operations and ticketing practices pose significant challenges under the existing Warsaw jurisdictions. Inter-carrier alliances, code sharing, electronic ticketing, Internet booking, etc., all complicate the task of determining applicable jurisdictions. Addition of the fifth jurisdiction would make this task much simpler.

- Most domestic flights today carry at least a few passengers who are on connecting segments of an international itinerary. The growth in numbers and types of international air travelers, and the complexity of the airline alliances that carry them, has lead to an increase in the number of claimants for whom jurisdiction is not available in the passenger's home State under the Warsaw Convention. This change in circumstances requires a change in the jurisdictional rules under Warsaw.

- Even so, the burden on carriers posed by a fifth jurisdiction would be minimal. In any fatal accident involving a commercial passenger airline there are likely to be many other claimants from the same jurisdiction, whose actions would be brought in the homeland jurisdiction by reason of purchase of the ticket in that jurisdiction. In these cases, adding the fifth jurisdiction does not impose any material litigation burden on the defending airline.

- Furthermore, the draft convention assures that the carrier will be subject to jurisdiction only in States where it has a significant commercial presence. This further ensures that the airline will not suffer hardship in defending suits brought under the fifth jurisdiction.

- Although only a small number of claimants would benefit from the fifth jurisdiction, it would be inequitable and unjustifiable to deprive these claimants of the right to bring an action in the passenger's homeland. To so deprive them might create considerable hardship.

- The fifth jurisdiction is not new. It was included in the 1971 Guatemala City Protocol and the 1975 Montreal Protocol No. 3. Failure to include it in a new convention would therefore represent a significant step backward from advances made as long ago as 1971.

THE FIFTH JURISDICTION IS CONSISTENT WITH INTERNATIONAL LAW AND PRINCIPLES OF JURISDICTION

In the U.S. view, the legal concepts behind the fifth jurisdiction are not only a matter of fundamental fairness to passengers and claimants on their behalf, but they are also entirely consistent with the principles of international law and with principles of jurisdiction adopted by many States. We believe that the Warsaw Convention's limitations on jurisdiction create inequities among victims that result, in some cases, in preventing litigants from bringing suit in the court that is most appropriate and most convenient, and, but for Warsaw, would have been a proper forum under State law.

LACK OF A FIFTH JURISDICTION HAS HARMED OUR CITIZENS

As noted above, the existing jurisdictional limitations of Warsaw conflict with domestic law in the United States and other countries. As a consequence, the Convention has impaired the rights of citizens of these countries. We provide a few examples below:

- Following the shootdown of Korean Airlines (KAL) Flight 007 (New York to Seoul) in 1983, killing all 269 people aboard, 108 decedents' cases were litigated in U.S. courts. However, cases brought on behalf of several U.S. citizens had to be litigated in foreign jurisdictions, including Korea, Japan, and the Philippines. While a U.S. court subsequently found that KAL's actions constituted "willful misconduct," the Korean courts refused even to entertain argument on the issue of "willful misconduct," and the Japanese and Philippine courts never ruled on the question. The results for claimants in a multitude of court systems were widely disparate; inequitable recoveries even existed among citizens of the same country.

- While a number of U.S. citizens were denied access to U.S. courts in the KAL accident, other foreign nationals were allowed to pursue claims in the United States. These included families of two Taiwanese ship engineers (tickets purchased by their shipping agent in New York, though issued in Panama), and a Korean national residing in Korea (ticket prepaid in the U.S., but issued in Korea).

- Of the families of French citizens killed in the crash of Swissair Flight 111 off the coast of Canada in September 1998, at least 20 may be prevented from seeking damages in French courts, because the passengers purchased their tickets in Switzerland.

THE FIFTH JURISDICTION IS CONSISTENT WITH DOMESTIC LAW IN MANY COUNTRIES

In many countries, the absence of the fifth jurisdiction may preclude national courts from assuming jurisdiction over cases that they otherwise could hear under national law. For example, some States provide to their citizens the right to bring suits locally on any contract to which the citizen is a party, regardless of where the contract was made or performed. Consequently, a foreigner, even if not residing or otherwise doing business in that State, may be subject to the jurisdiction of the courts of that State relative to contracts made with its citizens. Such laws are much broader than the fifth jurisdiction, as it appears in the draft convention, which does not provide homeland jurisdiction for all citizens of a State, nor does it reach all defendants.

For States having such laws, the jurisdictional limits of the Warsaw Convention would discriminate against victims of airline accidents, relative to claimants in legally analogous circumstances.

A second example of the adverse impact of Warsaw's limitations on jurisdiction would be a situation where a passenger seeks to bring, in his homeland, a claim against multiple defendants, all of whom would be subject to jurisdiction under national law. Even if the passenger were pursuing justice in the most convenient forum and all defendants had a commercial presence in the jurisdiction, the Warsaw Convention might deny jurisdiction over the airline defendant, depending on whether one of Warsaw's four tests of jurisdiction were met. Denial of jurisdiction over the airline might require the plaintiff to litigate in multiple jurisdictions. Dividing the litigation in this fashion would be both unduly burdensome and excessively expensive. The fifth jurisdiction might not resolve all such injustices, but it would eliminate the most egregious, because it would permit claimants to bring suit in what is likely the most convenient forum.

LEGAL CONSIDERATIONS RELATING TO THE FIFTH JURISDICTION

The United States contends that, in addition to the compelling policy reasons for supporting the fifth jurisdiction, there are also a number of important legal reasons for doing so.

1) Legal Precedent

We would note first that the fifth jurisdiction is based on clear precedent in the context of civil aviation. The fifth jurisdiction was incorporated into the 1971 Guatemala City Protocol and 1975 Montreal Protocol No. 3. Furthermore, there is precedent for the fifth jurisdiction even outside the context of civil aviation. A similar provision is contained in the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, December 13, 1994, 14 ILM 945.

The United States recognizes that earlier iterations of the fifth jurisdiction - the Guatemala City and Montreal Protocols - were subject to liability caps. However, we construe the recent efforts at ICAO, and the EU Regulations, as international recognition that the 1971 Guatemala City Protocol and 1975 Montreal Protocol No. 3 do not represent sufficient movement on the part of governments to address the rights of consumers. Therefore, the removal of liability limits is, perhaps, the motivating and unifying goal of the developed nations. Certainly every international agreement represents a package based on compromise, but we do not believe that eliminating one inequitable aspect of the 1929 Convention and its progeny - the liability cap - is reason to eliminate an advancement accepted by delegates at diplomatic conferences over 20 years ago.

2) Consistency With Principles of International Law

The fifth jurisdiction is consistent with general principles of international law, in that it requires significant nexus between both parties and the forum. In aviation, even more so than with other forms of transportation, the site of the accident, for any major international airline, could be virtually anyplace in the world. The 1929 Convention recognizes this by not including the accident site as one of the permitted jurisdictions.

Two of the jurisdictions presently provided for under the Convention relate to where the airline is incorporated and where its principal place of business is located. The fifth jurisdiction, as currently proposed, would only provide for jurisdiction in fora where the airline has a significant commercial presence. Thus, the fifth jurisdiction would appear consistent with recognition in the 1929 Convention that it is appropriate to look to where the airline does business, as a basis for jurisdiction.

A third basis for jurisdiction under the 1929 Convention is the place where the passenger purchased a ticket. This jurisdiction combines a requirement that an airline do business in the forum, and that the passenger have at least a minimal connection. As proposed, the fifth jurisdiction ensures, both with respect to the airline and the passenger, contacts equal to or greater than those under the current third basis for jurisdiction. Contacts under the fifth jurisdiction would be no less than those required under the third basis for Warsaw Convention jurisdiction.

The final basis for jurisdiction under the 1929 Convention is the passenger's destination. Once again, the fifth jurisdiction would appear to have greater connection to the events causing the harm than this forum, where we are assured only that the airline exercises traffic rights, perhaps only on a code-share basis, on at least one of its operations, and the passenger chose to travel on at least one occasion. This jurisdiction assures no greater connection, on the part of the airline, than the commercial presence requirement of the proposed fifth jurisdiction, and certainly represents a far lesser connection on the part of the passenger.

For these reasons, we conclude that the fifth jurisdiction is entirely consistent with the international legal principles underlying the original four jurisdictions and jurisdictions provided for under other international conventions.

3) "Forum Shopping"

Given the nature of the claims brought under the Warsaw Convention, States should expect that "forum shopping" will always be a potential problem. Accordingly, the Special Group draft convention has significant protections against forum shopping. The fifth jurisdiction applies only where it is the passenger's "principal and permanent residence," and then only if the carrier has a significant presence in that State. Certainly, plaintiffs, at least those with sufficient resources to exercise discretion in choosing a forum, may have marginally greater forum-shopping opportunities with five potential bases for jurisdiction, rather than four. While some consideration might be given this possibility, we believe that the far more important concern is that plaintiffs with limited resources have access to one reasonably accessible forum.

Further, the presence of a fifth jurisdiction could well result in fewer "forum shoppers" winding up in U.S. courts. With a convenient "homeland" court available to them, more non-U.S. residents will choose to sue in their "home court," rather than to bring suit in the U.S. Furthermore, U.S. courts are far more likely to dismiss lawsuits brought by non-U.S. residents on the grounds of *forum non conveniens* if a convenient homeland court is available to the plaintiff because of the fifth jurisdiction.

CONCLUSION

The United States welcomes discussion to increase understanding of the terms defining the scope of the fifth jurisdiction. The current iteration, reached through significant compromise, clearly does not provide for jurisdiction for all citizens of a State, nor does it reach all international airlines. In negotiating language for these provisions, the United States has attempted to recognize the sensitivity of these issues and the importance of broad-based support. We believe the current compromise language to be an acceptable formulation, so long as it is binding in a final convention on all States Parties and their carriers.

Hopefully, these compromises will meet the needs of the majority of States. While we expect discussion to continue over this issue, it is clear that subjecting the fifth jurisdiction to liability caps, or precluding exercise of the fifth jurisdiction until a claimant has endured long and fruitless litigation in an inconvenient jurisdiction, would not meet our fundamental objective of making justice more accessible to victims of airline accidents. Such provisions would, therefore, not be acceptable to the United States.

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DCW Doc No. 13
4/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

ARTICLE 48 – RESERVATIONS

(Presented by the United States of America)

1. The draft Article on Reservations presented by the Legal Committee Secretariat (DCW Doc No. 3) fails to take account of the Additional Protocol With Reference to Article 2 to the original Warsaw Convention. That Protocol permits States:

> ". . . to declare at the time of ratification or of adherence that the first paragraph of Article 2 of the Convention shall not apply to international transportation by air performed directly by the state, its colonies, protectorates, or mandated territories, or by any other territory under its sovereignty, suzerainty, or authority."

2. The United States believes that the following States have taken advantage of this Reservation, and that the Convention would not, therefore, apply to transportation performed directly by those States, including their military authorities: Canada, Chile, Congo, Cuba, Ethiopia, Pakistan, Philippines, and the United States.

3. Unless that Reservation were preserved in the new Convention, the United States, and we believe other States which have taken advantage of the Reservation, would be subject to a major impediment to ratification of the new Convention.

4. Accordingly, the United States proposes that the draft Article 48 be revised to read as follows:

"Article 48 - Reservations

"No reservation may be made to this Convention, except that a State may at any time declare by a notification addressed to the Depository that this Convention shall not apply to:

"1. International transportation by air performed directly by that State, or any territory under its authority; and/or

"2. The carriage of persons, cargo and baggage for its military authorities on aircraft registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities."

- END -

DCW Doc No. 13
4/5/99
CORRIGENDUM
14/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

ARTICLE 48 – RESERVATIONS

CORRIGENDUM

(Presented by the United States of America)

Delete "Pakistan" from the last line of paragraph 2.

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DCW Doc No. 14
6/5/99
English & Spanish only

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

Agenda item 9: Consideration of the draft Convention

COMMENTS FROM THE LATIN AMERICAN CIVIL AVIATION COMMISSION (LACAC) ON THE DRAFT CONVENTION

(Presented by the Latin American Civil Aviation Commission*)

SUMMARY

This working paper contains certain comments on the draft Convention to modernize and consolidate the "Warsaw System" presented by ICAO and highlights the support of LACAC member States (21) in establishing a single, integrated and harmonious legal system.

Introduction

1. Since the review of the "Warsaw System" began, both the International Civil Aviation Organization (ICAO) and the Latin American Civil Aviation Commission (LACAC) have shared the idea that the new system complies with the characteristics of integrity, coherence and harmony, to make available to the aeronautical community a new legal instrument that benefits customers and carriers equally.

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* Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Dominican Republica, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

2. Starting 1995, LACAC began efforts to harmonize the different criteria in the region with regard to the modernization of the "Warsaw System." To this end, various panel discussions and conferences were organized, with the participation of renowned legal experts of the International Civil Aviation Organization (ICAO), the Latin American Aeronautical Law and Spacial Association (ALADA) and the International Association of Latin American Air Transport (AITAL), organizations with which LACAC has worked in close collaboration.

Comments of the LACAC Member States

3. At the third meeting of the LACAC Group of Experts in Air Transport Policies, Economic and Legal Matters (GEPEJTA/3, Argentina, April 1999), the ICAO "Draft Convention for the unification of certain rules for international carriage by air," and the "Conclusions of the seminar on the draft of the new international convention on air transport and the carrier's liability," celebrated by ALADA (Peru, November 1998), and AITAL's comments during the different regional forums, were all analyzed. This analysis, together with the criteria gathered in the course of LACAC activities, contributed to the forging of a position on this issue of the States in the region.

4. In the first place, LACAC supports the ICAO initiative and ratifies the need for a single, universal and harmonious document for regulating air transport contracts and the liability of the carrier to the user. This agreement should be in keeping with the modernizing principles of international law and contemplate the interests of users and carriers in equal measure.

5. After analyzing the draft Convention, LACAC considers it necessary to make its conclusions known regarding some points that, given their importance, will substantially impinge upon the ratification and application of the draft Convention. From this perspective, the criteria that the international aeronautical community should take into account include the following:

a) Regarding the **"fifth jurisdiction,"** support should be given to that which is established in Art. 27 of the draft Convention, eliminating the text that appears in brackets as paragraph 3 bis which goes against the uniformity of the system; in other words, the States should favour the incorporation of a new jurisdiction, referred to as the place of permanent residence of the passenger, since normally, this jurisdiction is the most appropriate for determining the victim's compensation and since current options of the System already provide, in most cases, the possibility of a passenger starting legal proceedings in his own State.

b) Regarding **"compensation in the case of death or injury"** and taking into account that Art. 20 of the draft Convention establishes two levels, one of objective liability up to 100,000 SDR and the other of subjective liability without limits, and which the carrier must prove, LACAC believes that this formula satisfies the interests both of the States that observe amounts below and above the quantity stated above and those of the air carriers, including those which, in considerable number, signed the IATA Agreement. In this sense, Conference participants are exhorted to accept the text of the article as it appears in the draft Convention, since it constitutes an acceptable transaction that promotes the ratification of the new Convention.

c) Regarding **"mental and bodily injury"**, in its analysis, LACAC pointed out that from an ethical and legal point of view there is no reason not to compensate mental injury. Likewise, it considers that the concept of integrated compensation and protection of human life constitutes inseparable issues. Therefore, it is necessary that the international aeronautical community maintains these principles. To this end, it is recommended that mental injury be re-established in Art. 16, paragraph 1, as it appeared in the text approved by the Legal Committee or by adding a qualification of mental injury (serious or important) to avoid false claims; in this way, the two types of injuries would be linked.

6. Finally, the LACAC member States reiterate their support, in general terms, of the draft Convention presented by ICAO, recognizing that only this international organization can guarantee the universality of the system, creating an appropriate and secure legal framework, and avoiding the co-existence of different individual and antagonistic regulations; all of this in benefit of international air transport public interest.

Measures proposed to the Conference

7. The Conference is invited to take into account the criteria included in this note when addressing the topics herein contained.

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DCW Doc No. 15
10/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

PROPOSAL TO AMEND ARTICLE 3, PARAGRAPH 2 — PASSENGERS AND BAGGAGE

(Presented by Ukraine)

In Section 1 (Passenger Ticket), Article 3, paragraph 2, the Warsaw Convention defines the legal status of the passenger ticket as a document certifying the conclusion of a contract of carriage and its conditions.

Excluding this provision from the draft Convention and permitting in Article 3, paragraph 2 of the draft the use, instead of the document of carriage, of "any other means which preserves the information", listed in paragraph 1 of Article 3 of the draft, give the carrier the possibility of using not only those means which because of the carrier's technological capabilities are more convenient to the carrier and the passenger (electronic data bases), but also other means related to manual technologies which may not perform the functions related to the use of the ordinary ticket.

The proposed wording does not define the entity that certifies that the other information-preserving system proposed by the carrier meets such requirements.

Furthermore, there is the national legislation of States related to the requirements for documents of carriage.

In order to provide the possibility of taking into account national legislations and preserving the protection of the passenger's rights, it is proposed to add the following text after "paragraph 1" in the first sentence of Article 3, paragraph 2 of the draft:

". . . and which certifies the conclusion of a contract of carriage and its conditions, which are used by the carrier only taking into account the requirements of the legislation of the State Party according to the place of registration, . . ."

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DCW Doc No. 16
10/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

PROPOSAL TO AMEND ARTICLE 45 — INSURANCE

(Presented by Ukraine)

The proposed wording of Article 45, on the basis of the operating experience of the aviation authorities of Ukraine which have had such powers since 1993 in accordance with national legislation, shows that verifying only the existence of an insurance contract does not guarantee the existence of coverage of the insurance liability in view of the possible existence of:

— a brief stoppage of the insurance contract at the initiative of the insurance company in view of the non-timely fulfilment by the carrier of financial obligations under these contracts;

— the absence or brief stoppage of the reinsurance contract between the insurance companies and reinsurance brokers.

The inclusion of an article on insurance in the draft Convention should give certain powers to States not only to verify the existence of contracts, but also to monitor the fulfilment of the insurance contracts and the guarantee of insurance coverage.

In this connection, it is proposed to add the following text at the end of the first sentence:

". . . and, if necessary, they may use expedient mechanisms to monitor fulfilment of such insurance contracts, which do not exclude verifying reinsurance contracts."

— END —

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DCW Doc No. 17
11/5/99
English only

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

ICC POLICY STATEMENT ON ICAO'S REVISION TO THE WARSAW LIABILITY SYSTEM

(Presented by the International Chamber of Commerce – ICC)

Introduction

Since 1992, ICC has been involved in commenting on the attempts to update the Warsaw Liability System which governs the availability of damages to accident victims in international air transport. ICC wholly supports the achievement of a modern and satisfactory liability regime. In line with this objective, and in keeping with its top-level consultative status in ICAO, ICC is pleased to share its views on what it considers to be the main points of the ICAO Draft Convention for the Unification of Certain Rules for International Carriage by Air (hereafter also referred to as "ICAO Draft Convention").

The views expressed in this paper should be regarded as reflecting an interim position, since the final text of the ICAO Draft Convention has not yet been adopted. A diplomatic conference for the purpose of discussing the Draft ICAO Convention will be held in May 1999. ICC intends to participate actively in the diplomatic conference and may advocate more specific points, as suggested by ICC national committees, at appropriate points in the deliberation.

Summary of interim position

Subject to the following remarks, ICC endorses the ICAO Draft Convention for the Unification of Certain Rules for International Carriage by Air, because:

- ICAO attempts to achieve global uniformity;
- the creation of unlimited liability is a realistic and logical step;
- the more prominent position of the passenger based on consumer rights has been recognized;
- a more coherent system, applying also, for instance, to both the contractual and the actual carrier, has been drawn up;
- the explicit exclusion of punitive damages is welcome;
- the non-mandatory provisions on advance payments to be made to passengers, or persons entitled to claim on their behalf, are supported, if such claims are realistic.

On some points, such as the requirement of a written notice, the option of a fifth jurisdiction, the legal basis for claims exceeding 100.000 SDRs (fault to be proved by the claimant or presumed fault on the part of the carrier), the need for a definition of delay, the desirability of the regulation of the phenomenon of overbooking in a world-wide convention, as well as liability in the context of code sharing and franchising arrangements, ICC recommends and encourages further study.

Towards global uniformity

ICC's main aim is to support a framework for airline liability which is characterized by *global uniformity*. Since the beginning of the nineties, several initiatives have been developed to modernize the Warsaw System. They include but are not limited to the following:

The IATA Inter-Carrier Agreement (IIA) supplemented by the Implementation Agreement (MIA) emerged in 1995 as initiatives of several airlines to abolish the liability limits set by the Warsaw Convention. On 21 August 1996, the Chairman of the ICC Air Transport Commission submitted comments to the U.S. Department of Transportation on the IATA/ATA Agreements.

In October 1998, the EC Regulation on air carrier liability entered into force. The main objective of this Regulation is to abolish liability limits. In addition, an article was inserted which obliges the carrier to make an advance payment to the passenger in order to alleviate the first economic needs. As is the case with the IIA/MIA, the EC Regulation will be implemented side by side with the existing Warsaw instruments. However, the Regulation only applies to carriers of the fifteen Member States, insofar as non-Community air carriers who do not apply the EC conditions on unlimited liability and advance payments are required to inform their passengers thereof when embarking at Community airports.

Although the problem of low limits has been solved by both the IIA/MIA and the EC Regulation, the much desired uniformity is further away than ever. Carriers will now be subject to a wide variety of liability regimes: Warsaw, Warsaw/Hague, Montreal Inter-Carrier Agreement 1966, IIA/MIA, the EC-Regulation, or a combination of these instruments. This was not what the drafters of the original Warsaw Convention for the Unification of Certain Rules on airline liability had in mind. Although the work of the IATA and EC has to be praised, the IIA and the EC Regulation should be regarded as *interim* measures, paving the way for adoption of the ICAO Convention. Consequently, it would be desirable to have the Warsaw Convention replaced by a new uniform instrument prepared at governmental level to be adopted by states world-wide.

Raising passenger limits, and unlimited liability

The wide variety of applicable instruments reflects, among other things, widespread dissatisfaction with the liability limits imposed under the current Warsaw Convention. In the beginning of the nineties, ICC proposed a so-called three tier system: a contractually agreed (by means of an Inter-Carrier agreement) carrier-paid cover, in excess of the underlying treaty defined "first tier", topped by an optional supplemental insurance cover, possibly amounting to a complete deletion of the liability limit, accepted or rejected by the individual passenger at his own discretion and expense.

ICC favoured limited liability under the above-mentioned first and second tiers, whereas the optional third tier cover might be individually unlimited, although, for reasons related to technicalities of insurance, subject to an overall aggregate limit per aircraft and accident.

However, as proven by the coming into being of the EC Regulation and the acceptance of the IIA/MIA, it is now clear that unlimited liability is an achievable aim, even in terms of insurability. Moreover, unlimited liability has several advantages. *Firstly*, such a regime will bring global uniformity to the regime governing passenger claims. *Secondly*, unlimited liability will encourage parties to settle their disputes, instead of going into lengthy and expensive court battles, when trying to prove wilful misconduct. *Thirdly*, compensation should adequately reflect, and be significantly related to, the actual economic losses suffered by the victims of airline accidents. Limited liability does not achieve this. In the *fourth* place, limits are seen as a starting point for settlement negotiations as passengers expect to receive at least as much compensation as the scale of limits represents. *Fifthly*, provision has been made to the effect that liability limits are to be reviewed at regular intervals as inflation has an eroding effect on them.

From this perspective, there is no longer a need for the *three tier* system which ICC supported initially. A mandatory, treaty-defined, carrier-paid cover which is not related to any monetary limit is now recommended. Such a solution has to be dealt with outside the existing Warsaw System, preferably by a new convention, to be concluded by (ICAO) states.

In order to alleviate the heavy burden of unlimited liability, the liability should be strict up to 100.000 SDR. Beyond this amount there should be fault liability. The question remains whether to shift the burden of proof on to the passenger or not. Since the passenger enjoys the benefit of strict liability up to 100.000 SDR, there seems to be no reason to shift the burden of proof from the passenger to the carrier above that amount. The disadvantage of this option could be that it results in lengthy litigation on the establishment of fault by claimants. On the other hand, since aviation accidents are often complex and involve technical difficulties, a presumed fault liability could be said to be preferable, for the purpose of protecting consumer's interests, and limiting protracted court cases. ICC recommends further investigation of this issue, and inclusion of an optional clause in the ICAO Draft Convention.

Compensable damages

It is welcomed that the ICAO Draft Convention (see Article 23) has specifically outlawed compensation of punitive damages. Thus, this issue, which has been often the subject of litigation in the U.S, may now formally be resolved by treaty law.

Advance payment to meet the immediate economic needs

The ICAO Draft Convention (Article 22 A) refers to advance payments, to be made at the choice of the carrier, in order to address the immediate needs of the persons who would, according to that provision, be entitled to such payments. There may be a problem when it is unclear who is going to decide what amount corresponds with the first economic needs. Rightly so, the ICAO Draft

Convention leaves it to the discretion of the carriers of states signatory to the (draft) convention to make any advance payment. ICC supports the non-mandatory provisions on advance payments to be made to passengers or persons entitled to claim on their behalf.

Claims against third parties

Article 23 of the ICAO Draft Convention contains the basis of claims brought by a claimant *against the carrier*. This provision clarifies the situation under Article 24 of the Warsaw Convention. Airlines are now subject to a liability regime which is at least comparable to that of third parties. Any action for damages, however founded, whether under the Convention or in contract or in tort or otherwise, can only be brought subject to the conditions as are set out in the Convention. The cause of an accident can lie with the aircraft manufacturer, the ATC or other third parties involved in commercial aviation. Unjustified and artificial provisions designed to protect either second (i.e., airlines) or third parties should be avoided. On the other hand, in the light of the complexity of aviation cases, claimants would benefit from a system of "channelled liability" through the carrier.

Article 23 adequately reflects these interests. Whether necessary or not, Article 31 of the ICAO Draft Convention confirms the rights of airlines to take action against such third parties.

Cargo

The baggage and cargo provisions contained in the ICAO Draft incorporating the provisions of Montreal Protocol 4 are not controversial and should be maintained. Otherwise, reference is made to discussions within the ICC Committee on Air Cargo.

– END –

DCW Doc No. 18
11/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

LIABILITY OF THE CARRIER AND EXTENT OF COMPENSATION FOR DAMAGE – DEATH AND INJURY OF PASSENGERS

(Presented by India)

1 Under the Warsaw Convention the liability was based on the fault of the carrier. The fault of the carrier was presumed and it was for the carrier to prove that it was not at fault. In its time, the presumption of fault and resultant liability was a bold legislative step departing from the common principle "actroi incumbit probatio". It clearly favoured the claimant and took into account the technical and operational complexity of air transport, which would make it difficult for the claimant to prove carrier's fault. As quid pro quo, the amount of liability was limited. However, in case of wilful misconduct of the carrier, the liability could be unlimited. Thus, the presumed fault of the carrier and limits of liability were the main principles of the international regime governing the carrier's liability.

2 In its practical application, the convention was de facto amended by a private agreement between the air carriers operating to, from or via the territory of the United States of America through the Montreal Interim Agreement of 1966. The agreement introduced the principle of strict liability regardless of the fault of the carrier and also increased the liability limits to US$ 75,000 inclusive of legal fees and costs.

3 Subsequent international instruments adopted under the auspices of the ICAO, namely, the Guatemala City Protocol, 1971 and the Additional Protocol No.3, with respect to the death or personal injury of the passenger, incorporate the principle of strict liability regardless of the fault of the carrier. The limits of liability, however, could not be broken even in case of acts or omissions done with intent to cause damage or recklessly and with knowledge that damage would probably result i.e wilful misconduct.

4. This principle of strict liability in the first tier of liability limits has also been incorporated in the Agreement on Measures to Implement the IATA Inter-carrier Agreement on Passenger Liability, the European Union Regulation on Air Carrier Liability, besides the initiatives taken by some of the States to modernise and update the regime and limits of liability for international carriage of passenger by air. Thus, the concept of strict liability has been implanted since the 1966 Montreal Agreement.

5. Under the international instruments, which are in force, namely, the Warsaw Convention and the Warsaw Convention as amended by the Hague Protocol the limits of liability are 8,300 SDRs (US$ 10,000) and 16,600 SDRs (US$ 20,000) respectively. However, in case of wilful misconduct of the carrier, these limits do not apply. But, under the Guatemala City Protocol, 1971 and the Additional Protocol No.3, which are not yet in force, the limits of liability are capped to one hundred thousand SDRs.

6 The draft new convention proposes to introduce a two-tier liability system in the case of accidental death or injury to a passenger :

a) In the first tier, a regime of strict liability upto hundred thousand SDRs, irrespective of carrier's fault; and

b) In the second-tier, a regime on the basis of presumed fault of the carrier without any numerical limits of liability.

7 The above proposals represent a substantive departure from the status quo. It may be pointed out that a regime, which provides for unlimited liability of the carrier, based on its presumed fault tantamount to strict liability. Undoubtedly, such a regime would be against the interests of air carriers, especially the small and middle size. A liability regime to be acceptable to majority of States should equitably balance the interest of both the consumer as well as the airline. Therefore, in an attempt to modernise the existing regime and limits of liability, care should be taken not to go to the other extreme of providing for unlimited liability coupled with regime, which tantamount to strict liability. Such a regime would make very survival of the carriers questionable

8. Further, the implication of the proposal for unlimited liability is that depending upon the assessed value of life of the claimant, the carrier would be required to pay compensation in case of death or injury. The insurance companies and under writers will have to make provisions for such situations and will, therefore, hike up the insurance premiums to be paid by the carriers. It goes without saying that the value of life of a passenger from the developed countries would invariably get assessed at much higher compensation amount than that of a passenger coming from the developing countries. So, while the passengers of developing countries, in the case of death or injury, would get less compensation from the airlines of the developed countries, passengers of the developed countries will get higher compensation amount

from the airlines of the developing and developed countries. In other words, the passengers of both developing and developed countries will end up paying similar but more amount for the travel, but the main beneficiaries of the unlimited liability would be the passengers of the developed countries. This is not considered to be a fair proposition.

9. It may also be stressed upon that the acceptability of a regime by carriers did not necessarily mean acceptability of that regime by the Government also. The Governments have to consider not only the regime applicable to international carriage by air but also as applied to domestic air transport and other modes of transportation. In view of these considerations, it would be difficult for developing countries to agree to a general waiver of limits of liability.

10. The Indian delegation accepts the need to modernise and update the liability regime under the Warsaw system. However, any proposal in this regard should strike a balance between the interests of passengers on the one hand and that of the air transport industry on the other so that the air transport industry, especially of the developing world, can also survive. The Indian delegation would, therefore, like to make the following proposals in case of accidental death or injury to a passenger for consideration by this Conference:

a) The liability of the carrier shall be strict irrespective of its fault, however, subject to a limit of one hundred thousand SDRs.

b) The above limits of liability 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 the 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.

c) Only actual compensatory damages are recoverable and are required to be proved by the claimant.

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DCW Doc No. 19
11/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

REVIEW OF LIMITS – ARTICLE 21C

(Presented by India)

1. The Warsaw Convention and the Warsaw Convention as amended by the Hague Protocol, under Article 22 stipulates the limits of liability but does not include any provision for periodic review of the limits of liability established under the Convention. To take care of devaluation of currency, the Guatemala City Protocol, 1971 and the Additional Protocol No.3, 1975, have stipulated that Conferences of the Parties to the Guatemala City Protocol, shall be convened during the fifth and tenth years respectively after the entry into force of the said Protocol for the purpose of reviewing the limits of liability.

2. As pointed out by the ICAO Secretariat in its paper LC/30-WP/4-26 of 1st May, 1997, provisions regarding the revision of the limits of liability can also be found in various other transport conventions; among others, the Convention on Civil Liability for Damage caused during carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels, signed at Geneva on 10th October, 1989. The Indian delegation, therefore, in order to provide certain degree of flexibility within the new convention to counter-balance the effects of inflation, accepts the need of periodic review of the limits of liability prescribed thereunder. Nonetheless, any mechanism evolved to periodically review the limits should provide an opportunity to each State Party to participate in the process of review and to take its own decision whether to accept the revised limits or not. In other words, the automatic application of the revised limits,

done by the Depository alone and not disapproved within three months by majority of the States Parties after being notified, as proposed, is not acceptable to the Indian delegation. It shall also not be out of place to mention that the special contract provisions proposed in Article 21D could be used to accommodate higher limits of liability or no limits of liability, whatsoever, if acceptable to the carrier.

3. In view of foregoing, the Indian delegation accepts the need to provide for periodical review of the limits of liability. However, the mechanism proposed to review the limits of liability and applicability of the revised limits is not acceptable to the Indian delegation. The Indian delegation would like to propose that Conferences of the Parties to the new Convention may be convened at an interval of every six years after the date of entry into force of the Convention for the purpose of reviewing the limits established under the Convention. Such Conferences may be convened coinciding with the triennial session of the ICAO Assembly to avoid additional expenditure. These Conferences shall review the revision in the limits of liability by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 21B. The revised limits shall be applicable to a State Party or its airlines only if it accepts the same.

– END –

DCW Doc No. 20
11/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

JURISDICTION – ARTICLE 27

(Presented by India)

1. Article 28 of the Warsaw Convention, in an imperative way, stipulates that an action for damages, at the option of the plaintiff, may be brought:

a) before the court having jurisdiction where the carrier –

i) is ordinarily resident, or

ii) has his principal place of business, or

iii) has an establishment by which the contract has been made or

b) before the court having jurisdiction at the place of destination.

Thus, a wide choice of fora is already available to permit a degree of "forum shopping". The Guatemala City Protocol, in 1971 introduced for the first time an additional forum in which claims could be adjudicated, namely, by the court where the passenger has his domicile of permanent residence (the so-called fifth jurisdiction). It is pertinent to note that the introduction of the fifth jurisdiction under the Guatemala City Protocol and subsequently under the Additional Protocol No.3

was linked with a very important provision that the limits of liability prescribed thereunder was capped to a maximum limit of one hundred thousand SDRs.

2. The proposed new instruments also provide for the fifth jurisdiction. It may be pointed out that under Article 20 there is already a proposal to waive the limits. However, the Indian delegation has separately proposed that the cap on the limits of liability could be removed subject to proof of wilful misconduct. In the light of the proposed liability regime, the acceptance of the fifth jurisdiction as an additional forum has far-reaching implications for small and medium sized airlines, especially, of the developing world, which would be extremely serious both from the point of view of logistics as well as financial costs. Therefore, it may not be possible for the Indian delegation to accept the fifth jurisdiction, as proposed. However, we are favourably inclined to support the French proposal that at the time of ratification, adherence or accession of the Convention, each State Party shall declare whether the fifth jurisdiction shall be applicable to it and its carriers and such declarations shall be binding on all other States Parties.

– END –

DCW Doc No. 21
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 20 :

COMPENSATION IN CASE OF DEATH OR INJURY OF PASSENGERS

(Presented by 53 African Contracting States)*

Summary

This working paper presents the views of its sponsors in respect to Article 20 of the draft text of the Convention and proposes the three-tier regime that would reconcile the concerns of all stakeholders.

Paragraph 2 of Article 20 is a crucial issue raising concerns in respect to unlimited liability, in the second tier, with the burden of proof on the carrier. There is as yet no consensus on whether the burden of proof, in the second tier, should be on the carrier or on the passenger; as evidenced by the split during the discussions at the last session of the ICAO Legal Committee as well as the discussions within the Special Group on the Modernization and Consolidation of the WARSAW System.

While accepting that the protection of the consumer is of great importance, it is also necessary not to neglect the interests of the carrier. Any initiative to be adequate on a world-wide basis must of necessity be a trade-off between the interests of the various stakeholders:

- the interests of the consumer for reasonable and fair compensation
- the interests of the state in ensuring equitable protection for their citizens
- the interests of the airlines to contain their liability expenses and insurance premium at reasonable levels
- the collective interests of all stakeholders to ensure uniform rules that reduce legal conflict and simplify claim settlement

* Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

The argument drawn from the acceptance of the IATA Inter-carrier Agreements by a large number of carriers is not convincing when one takes into account that the inter-carrier agreements have neither been accepted by the majority of IATA members nor do they sufficently cover the world, thus lacking essential universality and wider geographical coverage. With unspecified limits in the second tier, airlines would face increases in insurance costs.

The observer for the International Union of Aviation Insurers (IUAI) stated during the discussion at the Special Group that aviation insurers would prefer that clear limits of liability be established. If this was not possible, the insurers would prefer that the burden of proof be on the passenger. This is a signal that insurance costs will in the long run increase.

The additional defense contained in paragraph (c) of Article 20 of the draft is not a substantive improvement since the defence was available under the Warsaw System, albeit implicitly and rases other difficulties.

However, cognisant of the fact that the issue of the burden of proof is of critical importance and a condition precedent to the acceptance of any expansion of the jurisdictional choice in Article 27, it is essential to seek a solution that would offer fair and equitable compensation to the vast majority of the travelling public. In the context it is proposed that a three-tier system be adopted under which:

a) the carrier will be liable in the first tier, for claims of up to SDR 100,000, on the basis of strict liability;

b) for claims exceeding that amount and up to a second layer of 500,000 SDR, the liability of the carrier would be based on the principle of presumptive liability, i.e. the carrier will have the defense of non-negligence;

c) for claims in excess of the third layer of 500,000 SDR, the liability of the carrier would be based on fault, without a numerical limit of liability.

This proposal would cover the vast majority of cases. For those claimants that seek to recover in excess of 500,000 SDR, the burden of proof will shift to them.

The Diplomatic Conference is invited to consider the following amendment to Article 20:

« 1. **Subject to paragraph 2 below**, the carrier shall not be liable for damages arising under Article 16 paragraph 1, which exceeds 100,000SDR if the carrier proves that it and its servants or agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

2. **The liability of the carrier above an amount of 500,000 SDR shall be subject to proof that the damage sustained by the passenger was due to the fault or neglect of the carrier or its servants or agents acting within their scope of employment. »**

- END -

DCW Doc No. 22
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 21 A: LIMITS OF LIABILITY

(Presented by 53 African Contracting States)*

Summary

This working paper presents a proposed amendment of Article 21 A.

Proposal:

1. Article 21A, in an imperative manner, fixes an arbitrary monetary value for damages occasioned by delay in the carriage of passengers, baggage or cargo.

2. In order to achieve a balanced approach, it is proposed to simply delete paragraph 1 of Article 21 A, which fixes a sum or value as a compensation for the delay of a passenger.

3. With respect to the per passenger limit, it is proposed that the liability of a carrier in the case of destruction, loss or damage of baggage should be limited to a sum of up to 735 SDR's per passenger.

4. The reference to delay in Article 21 A, paragraph 2, 3 and 4 should therefore be deleted and any necessary adjustments be made to paragraph 5.

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* Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe

(3 pages)

Reasons:

5. The reasons advanced for the above proposals are as follows:

(a) There is no clear definition for a delay. The Special Group on the Modernization and Consolidation of the "Warsaw System" was incapable of agreeing on a definition as the reasons for delay, duration of delay (including force majeur etc.) are not easy to agree upon.

(b) Article 18 of the Draft Convention includes delays as a matter for compensation for passengers, and checked baggage. The courts can invoke Article 18 and investigate the defenses of the carrier and therefore there is no need of arbitrarily fixing a monetary value in the Convention in disregard of the circumstances that led to delay and the damages caused by the delay in the first place.

6. The Diplomatic Conference is therefore invited to consider the attached amendments in Article 21 A.

ATTACHMENT

Article 21 A - Limits of Liability

1. In the carriage of baggage the liability of the carrier in the case of destruction, loss or damage is limited to [735] Special Drawing Rights for each passenger unless the passenger has made, at the time when checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

2. In the carriage of cargo, the liability of the carrier in the case of destruction, loss or damage is limited to a sum of [17] Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

3. In the case of loss, damage or delay of part of the 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 or damage of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

4. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

5. The limits prescribed in Article 20 and 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, including interest. 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.

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DCW Doc No. 23
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 27 – JURISDICTION

(Presented by 53 African Contracting States)*

Summary

This paper presents the views of the sponsors that Article 27 is a package to be considered along Article 20, in particular with the issue of the burden of proof being on the carrier for claims in excess of the first tier.

Paragraph 2 of Article 27 introduces a fifth jurisdiction based on the domicile of the passenger. This paragraph is crucial and interlinked with Article 20. Major concerns were expressed in respect thereto, particularly so when taking into account the regime of unlimited liability. A consensus has yet to be reached on the introduction of fifth jurisdiction. Neither is there a consensus on the concept of domicile related thereto.

The sponsors believe that the existing four jurisdictions are adequate as they cover more than 90% of the cases allowing the passenger the option to bring legal action where the passenger has permanent residence at the time the accident occurs. The introduction of fifth jurisdiction would bring more complications than benefits and would not promote the necessary consensus.

While a fifth jurisdiction was included in the Guatemala City Protocol, it was within the scenario of unbreakable limits of liability. As the new draft departs substantially from the concept of unbreakable limits of liability, the inclusion of a fifth jurisdiction in the new draft is not a convincing argument for its incorporation in the new Draft.

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* Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape-Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tomé & Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

(2 pages)

Any expansion of jurisdictional choices would lead, over the long term, to an increase in insurance costs for the carrier.

In addition, the court of the proposed fifth jurisdiction would not be concerned only with the calculation of a passenger's claim, but also with issues related to assessment of fault, contributory negligence and other matters related to Article 20. Accordingly, the sponsors have difficulty in accepting the expansion of the jurisdictional choice.

The Diplomatic Conference is invited to take into account this working paper.

– END –

DCW Doc No. 24
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 20:

COMPENSATION IN CASE OF DEATH OR INJURY OF PASSENGERS

(Presented by Viet Nam)

Regarding issues of liability of the carrier raised in Article 20 of the draft Convention, Viet Nam supports the two-tier system of liability. However, the modernization of the liability system of the Warsaw Convention should balance the interests of passengers with those of the air transport industry so that the air transport industry, especially of the developing countries, can also survive and develop. Therefore Viet Nam would like to propose the liability system in case of death or injury of passengers as follows:

— The first tier shall be a regime of presumed fault liability of up to 100 000 SDR.

— The second tier shall be a regime of proven fault liability without numerical limits with burden of proof on the part of the passenger. The fault of the carrier should include its neglect.

Pursuant to our proposal, the interests of consumers are increased by the extent of the carrier's liability limit of up to 100 000 SDR according to the first tier, and by the inclusion of the carrier's neglect according to the second tier. This is a big progress in favour of protection of the consumers. Viet Nam would like the developed countries to consider the proposal, taking into account the current development level of the air transport industry of developing countries.

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DCW Doc No. 25
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 21 C:

REVIEW OF LIMITS

(Presented by Viet Nam)

Viet Nam does not oppose the provision regarding the mechanism of raising limits of liability at five-year intervals in accordance with the accumulated rate of inflation. However, the mechanism should create opportunities for all States Parties to participate in the revision of limits of liability and should reflect the world's economic development as well.

Therefore, Viet Nam would like to propose the following mechanism for reviewing limits of liability:

— The revised limits shall not come into effect unless ratified by the majority of States Parties and the revised limits shall be applicable to the ratifying States Parties and their airlines only.

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DCW Doc No. 26
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 27:

JURISDICTION

(Presented by Viet Nam)

Based on principle of balance between the interests of consumers and those of air transport industry, it is clear that the acceptance of the fifth jurisdiction will create unfavourable conditions for small and medium-size airlines, especially of the developing countries. Therefore, it is hard for Viet Nam to accept the fifth jurisdiction as mentioned in the draft Convention. However, Viet Nam supports the solution proposed in paragraph 3 *bis* of Article 27 of the draft.

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DCW Doc No. 27
12/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

ARTICLE 27 – FIFTH JURISDICTION

TWO CASES REFLECTING UNITED STATES LAW ON *FORUM NON CONVENIENS*

(Presented by the United States of America)

In its Working Paper on "The Fifth Jurisdiction", the United States noted under Legal Considerations Relating to the Fifth Jurisdiction, paragraph 3 - "Forum Shopping":

> ". . . the presence of a fifth jurisdiction could well result in fewer "forum shoppers" winding up in U.S. courts. With a convenient "homeland" court available to them, more non-U.S. residents will choose to sue in their "home court," rather than to bring suit in the U.S. Furthermore, U.S. courts are far more likely to dismiss lawsuits brought by non-U.S. residents on the grounds of *forum non conveniens* if a convenient homeland court is available to the plaintiff because of the fifth jurisdiction."

Set forth below are synopses of two U.S. cases: *Piper Aircraft v. Reyno*, 454 U.S. 235 (1981) and *Nolan v. The Boeing Company*, 919 F.2d 1058 (CA 5, 1990). These cases illustrate this concept of *forum non conveniens* as applied by U.S. courts to foreign nationals suing in the United States. In these cases, jurisdiction would otherwise be available in U.S. courts, but the courts dismissed the cases on the basis of *forum non conveniens*.

SYNOPSIS:

PIPER AIRCRAFT CO. v. REYNO

454 U.S. 235 (1981)

Decision by the Supreme Court of the United States
(The highest appeals court in the United States)

Suit by Representatives of several citizens and residents of Scotland who were killed in an airplane crash in Scotland during a charter flight by a British carrier. The pilot and all of the decedents' heirs and next of kin were Scottish subjects and citizens, and investigation of the accident was conducted by British authorities. Suit was against the U.S. manufacturer of the plane and propellers. A motion to dismiss on the basis of *forum non conveniens* was granted by the District Court, but reversed on appeal. The dismissal was reinstated by the Supreme Court of the United States.

The Supreme Court held:

> Dismissal under *forum non conveniens* will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice. The fact that applicable law is more favorable to the plaintiff in his chosen forum, does not defeat application of the doctrine. To permit such inconvenient cases would pose substantial practical problems, requiring that trial courts determine complex problems in conflict of laws and comparative law, and increasing the flow into American courts of litigation by foreign plaintiffs.
>
> The District Court properly decided that the presumption in favor of the plaintiff's forum choice applied with less than maximum force when the plaintiff or (as here) the real parties in interest are foreign. When the plaintiff has chosen the home forum, it is reasonable to assume that the choice is convenient; but when the plaintiff or real parties in interest are foreign, this assumption is much less reasonable and the plaintiff's choice deserves less deference.
>
> The District Court did not act unreasonably in concluding that fewer evidentiary problems would be posed if the trial were held in Scotland, a large portion of the relevant evidence being located there. The District Court also correctly concluded that the problems posed by the petitioners' inability to implead potential Scottish third-party defendants – the pilot's estate, the plane's owners, and the charter company – supported holding the trial in Scotland.
>
> The District Court's review of the factors relating to the public interest was also reasonable. Even aside from the question whether Scottish law might be applicable in part, all other public interest factors favor trial in Scotland, which has a very strong interest in this litigation. The accident occurred there, all of the decedents were Scottish, and apart from the petitioners (appointed U.S. representatives for the purpose of the litigation), all potential parties are either Scottish or English.

SYNOPSIS:

NOLAN v. THE BOEING COMPANY

919 F. 2d 1058, 1067-70 (CA5, 1990)

Suit by U.S. appointed representatives for purposes of the suit on behalf of mainly U.K. citizens and residents (none of the decedents were U.S. citizens or residents) for death from the crash of a British Midland Airways (BMA) B 737-400 aircraft en route from London, England to Belfast, North Ireland. The aircraft was owned and maintained by BMA, a U.K. corporation. The action was brought against Boeing Company and General Electric Company (designer and manufacturer of part of the aircraft engines). The District Court dismissed the case on the basis of *forum non conveniens*. On appeal, the Federal Court of Appeals affirmed. The Court of Appeals held:

> In addressing *forum non conveniens* motions the district court must follow a two-step process. The court must first find that there is an adequate alternative forum in which to try the case. If the court finds that such a forum exists, it must then consider various private and public interest factors in determining the propriety of a *forum non conveniens* dismissal.
>
> The district court properly made these determinations. The United Kingdom—the home of most of the represented plaintiffs, the headquarters of the air carrier, and the site of the accident—constituted an adequate forum in which to resolve this dispute. Moreover, to insure "availability" of the forum, the court conditioned its dismissal order on the defendants' agreement to submit to jurisdiction in the United Kingdom.
>
> The district court then carefully evaluated the private interests of the litigants. First, it noted that although the plaintiff's choice of forum must weigh in the balance, the choice of foreign plaintiffs merits less deference than that of American plaintiffs. In concluding that the U.K. would be the more convenient forum, the court noted the appellants' argument that the evidence regarding the design, assembly, manufacture, and testing of the aircraft is in the United States. However, the evidence regarding the crash itself and the actions of British Midland Airways—which is essential to the defendants' claim that pilot error caused the crash—is in the United Kingdom. The court also noted that (1) substantially all of the damages evidence is in the U.K.; (2) many of the witnesses, most of whom were in the U.K., were beyond the compulsory process of the federal courts; and (3) the defendants would be unable to join BMA as a third-party defendant in the U.S. federal forum. In short, the district court found that all of the private interest factors favored the United Kingdom forum.
>
> The district court also found the public interest factors to weigh in favor of the U.K. forum. None of the more than 100 plaintiffs in these sixteen cases is a U.S. resident or citizen. The accident occurred in England and English law would most likely govern the resolution of these cases. Moreover, the district court noted that a trial could last for months and found that because the controversy had no connection whatsoever with the state of Louisiana, such onerous jury duty should not be imposed on the citizens of Louisiana.

After reviewing all of the factors and evidence considered by the district court, we conclude that the court acted neither unreasonably nor arbitrarily in dismissing these cases on the grounds of *forum non conveniens*.

The primary purpose of *forum non conveniens* is to allow a court to resist impositions upon its jurisdiction and to protect the interests of parties to the litigation by adjudicating the claim in the most suitable and convenient forum. A forum is suitable and convenient when the entire case and all parties come within the jurisdiction of that forum.

- END -

DCW Doc No. 28
13/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

AN AVIATION INSURANCE VIEW OF THE DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

(Presented by International Union of Aviation Insurers – IUAI)

INTRODUCTION

The IUAI produced the first version of this aviation insurance view in January 1998. It commented on the draft Convention produced by the April/May 1997 ICAO Legal Commission meeting. This version – Version 2 – has been prepared in response to the revised draft Convention (referred to subsequently as "the 1998 draft"), that was produced by the Special Group of the Legal Committee at their April 1998 meeting.

This paper offers comment and views from an aviation insurance perspective; it has been prepared by a small group representing insurance underwriting interests in the French, German, Italian, Swiss, UK and US markets. This paper has been endorsed by the IUAI Executive Committee, but cannot be taken to represent a formal IUAI policy. IUAI is not a policy making body.

Insofar as the new Convention will overcome the problems of the existing fragmented regime it is to be welcomed. The existing instruments are imperfect and of only partial effect; the EC regulation applies only to European carriers and the IIA was intended only as a temporary measure in anticipation of the new Convention. At the same time it must be recognised that the lengthy ratification process for a new Convention could ensure a continuance of a mixed regime for some years to come.

The 1998 Special Group draft is a marked improvement on its predecessor, and insurers are pleased to note that many of their concerns over the original have been satisfactorily addressed. This paper confines itself to those articles of the 1998 draft where insurers still have concerns. It is important to restate here that clarity is the principal virtue that insurers seek in the new Convention; we believe that this is also in the best interests of insureds.

GENERAL

It remains true that a greater exposure to liability claims must be funded by increased insurance premiums. The cost of insurance will, in the long run, be determined by the degree of exposure to risk and the level of claims paid. In the shorter term, other forces within the market affect aviation insurance rates, but the long-term trend inevitably will reflect the degree of exposure and level of claims. The 1998 draft, like its predecessor, is likely to increase the volume of claims and to increase the level of damage awards. That said, it is not possible to quantify the increases because of the unpredictable nature of market forces and future claims settlements.

Article 16

We welcome the removal of "mental injury" from this Article. However, for the sake of clarity, and to prevent the possibility of "mental injury" finding its way back through an over-generous interpretation of the word "injury", it would be prudent to qualify it as "bodily injury" throughout the text.

Again for reasons of precision and clarity, it would be preferable to substitute "negligence or wrongful act or omission" for "fault" at the end of 16(2). Negligence is a well-understood legal concept, whereas fault is more open to further judicial interpretation. The suggested form of words is taken from Article 20(c), where presumably it was included to aid interpretation in jurisdictions that did not have a negligence concept *per se*. This amendment would add clarity and uniformity, particularly if it were applied throughout the draft.

There is a difference in wording between 16(1) and 16(2). The former states "...the carrier is not liable *to the extent* that...", whereas the latter has "... the carrier is not liable *if and to the extent* that....." It seems that this difference may be unintentional since Article 17 uses the same wording as 16(2). This last has the virtue of precision and should be adopted throughout the draft.

It is puzzling to find a definition of baggage in 16(4) at the end of the Article when the word has already been used as an unqualified term in 16(1), (2) and (3). Since it is a definition that applies to the entire Convention it would be better placed at the beginning, either in Article 1 or 3.

We welcome the inclusion of the twenty-one day period in 16(3). It is helpful for carriers to know at what point missing luggage translates into a claim.

Article 17

We have argued previously that "event" is too wide a description for damage causation, and could lead to an increase in claims. "Event" is an entirely neutral word, and could describe any combination of circumstances entirely extraneous to, but occurring during, the carriage by air which gave rise to damage. It should be replaced by "accident" in line 2 of 17(1) and in 17(4).

Article 19

We remain concerned that the present wording of Article 19 is capable of several different readings. It is believed that in the first sentence it is intended to exonerate the carrier to the extent that damage was caused either:

a) By the person claiming compensation, or,

b) By some other party (such as, for example, a cargo forwarder), from whom the party claiming compensation derives rights.

The second sentence is believed to cover the situation where the claim is progressed by the Executor or Administrator of a deceased person's estate.

However, in another reading the first sentence can be taken to cover where compensation is claimed by the passenger (i.e. the victim or next of kin and/or assignees), whilst the second sentence can be taken to recognise the rights of third parties to claim compensation. Thus, for example, the employer of a passenger (or any other third party, e.g. the aircraft manufacturer) could acquire a right to claim for compensation which may not otherwise exist.

We maintain our suggestion that as the wording of Article 19 lacks clarity, it be reviewed and redrafted so that the intention may be made unambiguous.

Article 20

It is to be welcomed that the various options in the previous draft have been set aside in favour of a single tier of strict liability up to SDR 100,000. There remain, however, three areas for discussion.

Article 20 states that the carrier "shall not be liable for damages..... *which exceed SDR 100,000.*" The EC regulation, on the other hand, states that the carrier is liable "*up to SDR 100,000.*" Although at first sight these two wordings have the same meaning, the Article 20 version could lead to an unfortunate result. The EC definition allows damage awards below SDR 100,000, whereas Article 20 could be interpreted as providing a *minimum* payment of that amount.

This would be a concern in the US, where plaintiffs' lawyers are already viewing the SDR 100,000 as a "personal accident" policy, providing a minimum, guaranteed sum on which to build their clients' cases. (See the attached extract from a speech by Lee Kreindler, which was the basis for an article in the New York Law Review.) It may also be of significance in other jurisdictions, because the "accident" in Article 16, on which Article 20 relies, could be as minor as a coffee spill. Therefore, there is the potential for SDR 100,000 to be interpreted as the minimum payment for an accident, regardless of the nature and severity of the event. The use of the EC wording - "*up to* SDR 100,000" - would lessen this possibility.

We understand that there is support building for the proposition that instead of the carrier having to prove it took all necessary measures to avoid paying over SDR 100,000, the passenger might be required to prove negligence to recover in excess of SDR 100,000. From a practical point of view, requiring the plaintiff to prove negligence is in accordance with the overwhelming majority of legal systems around the world. Those that do not refer to negligence, nevertheless embrace the concept.

It may also be prudent to reaffirm that the intent is to compensate *provable* damages. The negative construction of Article 20 makes it difficult to qualify "damages" with "provable" and therefore it may be better to insert "provable damages" in Article 16.

The inclusion of "solely" in Article 20c is worthy of mention. Article 20c was included specifically to provide a further defence for the carrier as a quid pro quo for his acceptance of the burden of proof. It would be extremely difficult for the carrier to prove that liability rested 100% with a third party or group of third parties. The carrier, by virtue of his role, is implicated to some degree almost automatically and it could be argued that "solely" is inequitable to him. However, it is recognised that the draft has the passenger in mind, and that the carrier is likely to prove the immediate source of payment for a plaintiff. The carrier could subsequently claim contributory damages from a third party, although this would be a long process in cases where the cause of the accident were difficult to determine. This would be a significant financial burden on the carrier.

In practical terms, the fears and concerns of those who objected to the exclusion of this word are likely to be realised even on the present draft. If a carrier or its insurer is involved in an accident where there appears to be a strong likelihood of product liability, the case can be defended on the basis of Article 20(c). The manufacturer would be brought in. The case would proceed to trial. It would only be at trial that the issue would be decided whether or not the defence was available to the carrier. At the same time the extent of the manufacturer's liability would be ascertained and the order of the Court would be that there should be an apportionment. Since that is the practical effect of the draft, it would be more realistic for the draft to reflect actuality. This would be achieved by deletion of the word "solely".

In addition, there appears to be a real possibility that the issue of volunteers which has manifested itself under the IATA regime may be a continuing problem. Deletion of the word "solely" addresses that.

Article 27

We restate our view that we understand that there is widespread antipathy to the introduction of a fifth jurisdiction. Many aviation insurers consider that the traditional text of Article 28, providing for alternative fora for proceedings at the option of the claimant, has been one of the most successful elements of the existing arrangements, providing a fair balance between competing interests.

If it is the wish to introduce some form of fifth jurisdiction option linked to the domicile or permanent residence of the passenger, then the primary consequence will be the prosecution of claims by nationals of high compensation states in their own states regardless of any link between that state and the journey or the operation of the aircraft in question. Member States may question why aviation should be singled out for this treatment. Is the victim of a rail crash not entitled to equal treatment?

A fifth jurisdiction will drive up - quite significantly - the exposures of air carriers, especially in those parts of the world which do not engage in carriage to high compensation States. This exposure will lead directly to an increase in insurance charges. It is difficult to justify inviting airlines in the developing world to, in effect, subsidise the domestic compensation regime in high compensation States. It is suggested that many States are unlikely to ratify the new instrument with Article 27(2) a included. The Warsaw Convention would, should this happen, lose its global reach and become a regional instrument.

The substitution of "principal and permanent residence" for "domicile" is welcomed. This signals a clear intent on the part of the drafters which should aid subsequent interpretation.

Article 27(2) and (3 *bis*) create an uncertainty through the reference to "and its carriers" in the latter. It appears that the intention of Clause 2 is to enable a claim brought on behalf of a passenger having principal and permanent residence in, say, the United States, to be brought before US Courts so long as the requirements of 2b and c are met in the case of the defendant carrier. It makes sense for any extension of the four

jurisdictions under Clause 1 to be made optional at the instance of each State Party. However, the existing wording of 3 *bis* could be used to *broaden* Clause 2 in the sense that if the US makes a positive election that election would also bind "its carriers". If "its" means carriers having a US domicile, they are already subject to US proceedings by virtue of Clause 1, and our concern is that the words "and its carriers" could be used to export the Fifth Jurisdiction concept and enable a passenger having principal and permanent residence in say, Japan, to bring suit there rather than any of the existing jurisdictions if the accident arose from carriage of an airline registered in an electing State Party, even if Japan has not so elected. We believe that the intention is that this should only be permitted where the Japanese government makes a positive election.

The problem could be solved simply by deleting the words "and its carriers" in 3 *bis* and introducing some linking language into the beginning of Clause 2, e.g. by adding the words "which has made a positive election pursuant to Clause 3 *bis*" after the words "State Party" in line 2.

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DCW Doc No. 29
14/5/99
English & Arabic ONLY

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR
Comments on Articles 20 and 27

(Submitted by Member States of the Arab Civil Aviation Commission)*

Article 20 of the Draft Convention addresses an extremely crucial point, i.e. the liability of the air carrier. In the second tier of liability, the Article places the burden of proof on the carrier, a point which has received extensive discussions and raised differences of opinion both within the Legal Committee or in the context of efforts to modernize Warsaw System.

The ACAC Member States examined the regime of the liability of the international air carrier and reviewed the alternatives proposed in the first draft of the Convention relating to the liability of the air carrier for the death or injury of passengers. They have concluded that the three tier regime proposed in this draft was the optimal text to safeguard the interests of all parties concerned, and to reconcile the interest of the carrier and the passenger, particularly in respect of the burden of proof.

The ACAC Member States therefore propose the following regime for the carrier's Liability:

1. Limited liability of up to 100 000 SDR, without a need to prove the fault of the carrier.

2. Limited liability over the first tier for a sum ranging from 250 000 to 400 000 SDR, with the burden of proof on the carrier.

3. Unlimited liability over 400 000 SDR, with the burden of proof on the party who sustained the damage.

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*Jordan, United Arab Emirates, Bahrain, Tunisia, Oman, Iraq, Qatar, Palestine, Saudi Arabia, Syria, Sudan, Egypt, Morocco, Lebanon, Libya, Yemen.

Choosing a liability regime that has no ceiling provides equal opportunities to all passengers and reconciles the requirements of both the carrier and the passenger. Therefore, there would be no justification for the concept of the fifth jurisdiction proposed in Article 27. Although the Guatemala Protocol of 1971 provides for such a fifth jurisdiction, it nevertheless contains a limited liability regime. With the provision for unlimited liability in the draft under review there is, therefore, no room for a fifth juridiction.

The ACAC Member States hope that these two proposals will be considered favourably by Member States in the interest of international civil aviation cherished at the Conference.

DCW Doc No. 30
14/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

AT-WP/1769 - SOCIO-ECONOMIC ANALYSIS OF AIR CARRIER LIABILITY LIMITS

AT-WP/1773 - SOCIO-ECONOMIC ANALYSIS OF AIR CARRIER LIABILITY LIMITS 1) AIR CARRIER INPUT ON INSURANCE COVERS AND COST; AND 2) IATA INTERCARRIER AGREEMENT

(Presented by the Secretariat)

The attached documents are submitted for information.

(25 pages)

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AT-WP/1769
4/1/96

WORKING PAPER

INTERNATIONAL CIVIL AVIATION ORGANIZATION

147TH SESSION OF THE COUNCIL

AIR TRANSPORT COMMITTEE

Subject No. 15: Subjects Relating to Air Transport

SOCIO-ECONOMIC ANALYSIS OF AIR CARRIER LIABILITY LIMITS

(Presented by the Secretariat)

SUMMARY

This paper contains a socio-economic analysis of air carrier liability limits requested by the Council. The Committee is invited in paragraph 28 to review the analysis and transmit comments to the Council.

REFERENCES

AT-WP/1773
C-WP/10067
State letter EC 2/73-95/7
(dated 24 February 1995)
C 146/3
C 143/22

Introduction

1. In December 1994 the Council (143/22) established the parameters of a socio-economic analysis of the limits of air carrier liability to be carried out by the Secretariat in co-ordination with the International Air Transport Association (IATA), as part of a comprehensive effort to accelerate the modernization of the "Warsaw System" of air carrier liability in the light of the failure to obtain the necessary number of ratifications to Protocols adopted in 1971 and 1975 and the effects of inflation on prevailing levels of liability. The analysis was to be largely based on responses to questionnaires, one for States (distributed by ICAO) regarding the adequacy of the limits and one for air carriers (distributed by IATA) focusing on insurance costs.

2. This paper presents an analysis of the replies by States to the ICAO questionnaire, supplemented by input from other sources including a brief description of the impact of higher air carrier liability limits on insurance premiums from the perspective of the insurance industry. IATA is presenting a separate paper (AT-WP/1773) containing an analysis of the costs of insurance from an airline perspective as well as a description of a new intercarrier agreement on liability endorsed by the 51st

(16 pages)

Annual General Meeting of IATA at the end of October 1995. Both papers focus on liability limits for accidental death and personal injury to passengers since these appear to be the major preoccupation of States and air carriers, although reference is also made in the present paper to liability limits for destruction, loss, damage or delay of baggage and cargo.

3. Seventy-two States (Appendix, **Table 1**), almost 40 per cent of the 184 ICAO contracting States, replied to the ICAO questionnaire (State letter EC 2/73-95/7 of 24 February 1995). Furthermore, approaches were made to interested consumer groups, the insurance industry and other relevant international organizations and, in addition to informal comments from several of them, replies to suitably modified questionnaires were received from the International Airline Passengers Association (IAPA), the Air Transport Users Committee (AUC), the International Union of Aviation Insurers (IUAI) and, through the Association of South Pacific Airlines (ASPA), from three air carriers in that region.

4. It should be noted that the replies to the questionnaires issued by ICAO and IATA were received before air carriers initiated discussions leading to the new intercarrier agreement. Had the terms of the agreement been known, the replies to these questionnaires, particularly with regard to the passenger liability limits, might have been somewhat different.

Satisfaction with present limits

5. **Passenger.** The limits for accidental death and personal injury to passengers currently in force under the "Warsaw System" of air carrier liability are either 125 000 French gold francs (about U.S.$10 000) per passenger contained in the Warsaw Convention (1929) or 250 000 French gold francs (about U.S.$20 000) per passenger under the Hague Protocol (1955). Of the 72 States which replied to the ICAO questionnaire, 52 (72 per cent) expressed dissatisfaction with the level of these limits (Appendix, **Table 1**, second column). While these 52 States represent some 28 per cent of all contracting States, in 1994 the air carriers registered in them produced almost 80 per cent of total international scheduled passengers and passenger-kilometres performed.

6. Dissatisfaction with the present situation was fairly general throughout the world. It ranged from 5 of 8 (63 per cent) responding States in Asia/Pacific to both States in North America. In the other four geographical regions dissatisfaction was expressed by 11 of 14 (79 per cent) responding States in Africa; 20 of 30 (67 per cent) in Europe, 8 of 9 (89 per cent) in Latin America/Caribbean and 6 of 8 (75 per cent) in the Middle East.

7. The situation was fairly similar among the replies received by IATA to its questionnaire. Of the 53 air carriers which replied, 38 (72 per cent) expressed dissatisfaction with the adequacy of *the limits in force in their countries* (Appendix, **Table 2**); however it should be noted that for some of the responding air carriers the limit in force through enacted legislation is already SDR 100 000 or more (see paragraph 10 below).

8. **Baggage.** With regard to the limits for the destruction, loss, damage or delay of baggage, 41 States expressed dissatisfaction with the current situation (Appendix, **Table 1**, third column) while 26 States wished to retain the status quo; however a few of the former States would be prepared to delay a solution to this issue in favour of finding a resolution to the one on passenger liability. In the case of air carriers only 17 (out of 53) expressed dissatisfaction with the current limits.

9. **Cargo.** On the issue of the limits for the destruction, loss, damage or delay of cargo opinions were evenly split: 35 States expressed a need to update the current limits (Appendix, **Table 1**, fourth column), while another 35 States were satisfied with the status quo. Only 12 (out of 53) air carriers expressed dissatisfaction with the current limits.

Appropriate new limits

10. **Passenger.** A number of States and carriers have already taken action to increase the liability limits provided for under the "Warsaw System" (Appendix, **Table 3**). In 1966, air carriers operating passenger transport to, from or through the United States agreed to file limits of liability (breakable) for each passenger in case of death or bodily injury of U.S.$75 000 inclusive of legal fees and costs and U.S.$58 000 exclusive of legal fees and costs. More recently a number of States and carriers have increased liability limits to SDR 100 000 (the amount proposed in 1975 in Additional Montreal Protocol No. 3, about U.S.$150 000), and some have gone further to take into account inflation since 1975 and other factors (for example, Australia SDR 260 000, ECAC States recommended at least SDR 250 000, Japanese carriers unlimited, IATA intercarrier agreement no limit specified).

11. The questionnaire enquired as to the existing liability limits for domestic air carriage to establish if there were significant differences with those applied for international carriage. The responses indicate that while many States have adopted the Warsaw/Hague limits (or equivalent in national currency) for domestic carriage, others, mostly in Europe, have adopted limits in the region of SDR 100 000, with a few States legislating higher limits (Appendix, **Table 4**). Japan, Poland and the United States have unlimited liability with respect to carriage on domestic air services, while Canada and Lithuania have no specified limits.

12. For other modes of transport, such as rail, road, sea and inland waterways, there are a number of international Conventions which establish liability limits for accidental death or personal injury of passengers on international journeys (Appendix, **Table 5**). The liability limits for almost all the Conventions in force were established in the seventies and range between about 250 000 gold francs[1] (road: CVR 1973) and SDR 70 000 (rail: COTIF-CIV 1980). However, in general States can legislate higher limits for the carriers of their own State if they wish to do so. Through a Protocol (not yet in force), the passenger liability limits under the Athens Convention of 1974 (maritime transport) were raised in 1990 from SDR 46 666 to SDR 175 000. The basis for the latter was the passenger liability limit shown in the Additional Montreal Protocol No.3 to the Warsaw Convention after applying the amending formula adopted with that Protocol (without adjustment for inflation).

13. With regard to what new passenger liability limit for international air carriage would satisfy the requirements of individual States, the options offered in the questionnaire ranged from SDR 20 000 to SDR 700 000 plus "other". Most responding States (and carriers) from Africa, Latin America/Caribbean and Middle East favoured the adoption of a limit of SDR 100 000. On the other hand most of the responding States (and carriers) from Asia/Pacific, Europe and North America favoured raising the limit to some SDR 250 000 or more, with three States: Japan, Switzerland and the United States, suggesting that there should be no limits (Appendix, **Table 6**). Including the States which favoured unlimited liability, 21 States (out of 52) indicated that they would wish to adopt a limit of not less than SDR 250 000.

14. The ICAO and IATA questionnaires each advanced the possibility that a single instrument of the Warsaw System could specify for different States, or groups of States, different liability limits with respect to passengers on international air services. Only 29 of the 72 responding States and 19 of the 53 responding air carriers indicated that they would object to such an approach and some of these indicated that they might be prepared to accept differing limits if this was necessary to preserve the "Warsaw System". On the other hand, some with no objection as such indicated that they would prefer a single limit. Of those which objected some believed such a situation would give rise to competitive issues and

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[1] A gold franc corresponds to 10/31 grammes of gold of 900 millesimal fineness.

create a distortion in the marketplace in favour of the carriers of States with higher limits; others suggested it would be impractical from a legal point of view, complicated and inefficient to administer, and predicate against a uniform system. Singapore suggested that different levels of liability were unnecessary since the "Warsaw System" deals with liability limits and not with the damages awarded to each victim and it was up to the courts to determine the latter based on a number of other factors, including, *inter alia*, income, age, family situation and injuries suffered.

15. **Baggage and cargo.** As with passenger liability, responses regarding adequate liability limits for baggage and cargo varied significantly amongst States (Appendix, **Tables 7 and 8** respectively).

Up-front payment

16. Regardless of their opinion on the level of the passenger liability limits, most States (61 out of 72) subscribed to the notion that there should be a compulsory no-fault up-front payment of a certain amount to be made to the victims within a short time from an accident, to be off-set against the final settlement. A large majority (45) of responding States felt that this payment should be expressed in the form of a percentage of the agreed limit, with a minority (8) preferring a fixed amount.

Potential impact on insurance premium levels of a higher passenger liability limit

17. Aviation insurance is highly competitive and specialized. It is also very much an international business, hence competition takes place both between and within national markets. Also to spread the risk some of the larger accounts may be underwritten partly in one country and partly in another, often under different terms and sometimes with different conditions. Because of the highly competitive nature of the business, rates can vary significantly not only from year to year but also from month to month.

18. Rates for airline liability insurance are not easy to calculate. In the first instance there are no scientific or actuarial formulas to do this. One of the reasons is that the number of actual passengers killed or injured in aircraft accidents is so small and random that it does not enable this type of calculation. Another aspect of uncertainty is the level of damages awarded by the courts in different States. Also, from an insurance point of view, airlines are not homogeneous entities. Each airline has its own particular characteristics and each presents different aspects of risk exposure. Even airlines which are broadly similar may have different risk management philosophies, different aircrew skills and experience levels, and different loss histories.

19. In general insurers will take a number of factors into account in arriving at the rate charged for a given airline liability exposure, such as: the amount of traffic carried; the geography of the routes served, particularly if these involve countries such as Japan or the United States where awards for personal injury are high; the exposure to risk on war insurance coverage; the nature of the route mix (such as domestic and/or international) and the liability regimes governing these routes; the type of passenger carried (businessmen, tourists, domicile) and the loads involved; the airline's claim history and the premiums it has paid; the amount of each claim the airline agrees to pay before calling in the insurer, that is the "deductible"; the airline's reputation and known safety consciousness; the type and age of aircraft operated; any particular liability exposure affecting the airline in question; and the rates which comparable airlines are paying. However as significant as all these elements may be, the most important of all is the capacity of the market, that is the sum of the risk exposure which each insurer is prepared to take.

20. For the many reasons given above and because the insurance market has at present an overcapacity, which means that premiums are likely to continue to fall, the Secretariat has not been able

to obtain a prevailing view of what impact changes in the liability limits may have on insurance premiums. Some experts suggest that whether the "Warsaw" limit is raised to SDR 250 000 or no limit is specified (as in the recent IATA agreement) total premium income may have to increase by some 30 per cent. However this figure is highly speculative and the actual impact it would have on individual carriers could vary significantly from carrier to carrier. For example carriers which already fly to the United States would see very little increase if any as their premiums already take into account the high level of awards in that country for personal injury; other carriers, however, might see a relatively large increase. It has also been suggested that premiums may need to be set at a higher figure if the (optional) provision in the recent IATA agreement for application of the law of domicile of the passenger is adopted, particularly in the modified forms under consideration by some governments.

21. Figures on the increase in insurance premiums, whether in percentage terms or in global amounts, may appear to be large, but these must be put in the context of what they may represent in terms of the increase in the over-all cost of operation and, ultimately, in terms of any corresponding increase in air fares. Past experience in the change in premiums due to higher limits (by generally large airlines) suggest that the changes may not be significant, and a study conducted by the Australian Government following its proposal to increase the limits for Australian carriers suggested that the additional cost to passengers could be measured in U.S. cents per trip rather than dollars. However these examples are related to carriers which are perceived as having good safety records and particularly so for the Australian carriers; so past experience may not be a good indicator of what may happen for other parts of the world. However it would appear that even in a worse case scenario any increase in fares to respond to the increased costs concerned would in most cases be well under U.S.$2 per round trip (with he highest exception remaining in single dollar figures) which may be compared with the average international round trip fare paid of about U.S.$620 in 1994.

Mechanism for achieving new limits

22. Whether they agreed or not that new limits are required, 16 States (out of 72) suggested that higher liability limits could be achieved through a supplemental compensation plan or insurance scheme, while 20 States indicated that this could be achieved through a carrier contractual agreement, such as the one recently adopted by IATA. However, some of the latter States also felt that such a solution could only be a short term palliative and that a more permanent long term solution needs to be achieved by States through a new Protocol to the Warsaw System. The latter view was also supported by many other respondents; thus a total of 44 States (out of 72) would like to see a new Protocol. This opinion was also supported by the majority of air carriers responding to the IATA questionnaire. The United States was not particular as to the mechanism used to amend the limits provided that all limits under the "Warsaw System" are removed for any international air journey ticketed in its territory and for any United States citizen or permanent resident travelling internationally on tickets issued outside the United States.

23. One of the issues which the questionnaire explored was what new mechanism could be adopted to update liability limits in the future. Thirty States suggested that meetings should be convened at regular intervals (ranging from 3 to 10 years) in order to discuss the suitability of the applicable limits and change them if necessary. The majority of States (46, including 11 which had also given a positive response to having regular meetings), however, subscribed to the notion that changes should take place whenever a designated organization (ICAO, IATA, or another) notified them that certain multilaterally agreed preconditions were met (e.g. when the change in an international price index had reached or exceeded an agreed value). Of these 46 States, 26 indicated that any such increase should be sanctioned through a meeting, while 20 replied that they would accept an automatic increase to the limits (with 8 of these nevertheless seeing a need for some form of "ratification" process.

24. An interesting feature of some of the international Conventions adopted for other modes of transport discussed earlier is their amending mechanisms to revise the limits and/or the unit of currency. In the case of rail transport (COTIF), these changes are entrusted to a Revision Committee. An amendment introduced by that Committee comes into force twelve months after the States are notified of the change unless within four months from the date of such notification one-third of the member States file an objection. A similar "tacit acceptance rule" is also part of the 1990 Protocol to the Athens Convention (maritime transport). In this case the procedure is somewhat more complex, but bar any objections from at least a quarter of the States parties to the Convention, an amendment takes effect 36 months after it is adopted.

Ways of overcoming present and potential deficiencies of the Warsaw System

25. With regard to comments received on ways to overcome the current difficulties with the Warsaw System, ECAC States referred to Recommendation ECAC/16-1, adopted in June 1994 encouraging national carriers of these States ".. to update certain elements of the existing international air carrier liability system by means of an intercarrier Agreement", as an appropriate model to follow. In addition to proposing a passenger liability limit in case of death or injury of at least SDR 250 000 per passenger, to be reviewed every three years the Recommendation advances proposals for an early settlement of the uncontested part of the claim and the payment of a no-fault-up-front lump sum to those who are entitled to compensation.

26. Other comments indicate that a few States would like to re-discuss the issue of unbreakable limits. Canada also suggested that ICAO should study the financial implications to passengers and air carriers of having or not having limits of liability, while Egypt indicated that the term "air carrier" may need to be redefined to take into account aircraft leasing, joint operations and code sharing. Egypt also suggested that the aviation community should establish a new body affiliated to ICAO which would provide obligatory insurance to all air carriers.

Action by the Committee

27. In November 1995 the Council (146/3) agreed that a secretariat study group be established to assist the Legal Bureau in developing a mechanism within the framework of ICAO to accelerate the modernization of the "Warsaw System", and that the Legal Bureau should report thereon to the Council in the present (147th) Session. The socio-economic analysis of both this paper and that of IATA have already been transmitted to the study group so established as one of the bases for its work, and more detailed information obtained from both the ICAO and IATA questionnaires is also available to the group.

28. In the light of this recent action, the Committee is now invited to:

a) review the socio-economic analysis of air carrier liability limits contained in the present paper and that of IATA (AT-WP/1773);

b) agree that the analysis, together with the comments of the Committee, be transmitted to the Council in the present Session together with the report of the Legal Bureau on accelerating the modernization of the "Warsaw System"; and

c) invite the Council to take the appropriate action in the light of this analysis and the report of the Legal Bureau.

APPENDIX

Table 1 – States which replied to the ICAO questionnaire on air carrier liability and their satisfaction with current liability limits
(Attachment B to State letter EC 2/73-95/7 of 24 February 1995,
Y = Yes, N = No, – = No response to this question)

State	Satisfied with current liability limits in force under the "Warsaw System" for		
	Passengers	Baggage	Cargo
Argentina	N	N	N
Australia	N	Y	N
Austria	N	N	N
Azerbaijan	Y	N	N
Bahrain	N	N	Y
Belgium	N	N	N
Benin	N	N	N
Bolivia	N	N	–
Brazil	N	N	N
Bulgaria	N	Y	Y
Burkina Faso	N	N	Y
Burundi	N	N	N
Canada	N	N	Y
Chile	N	N	N
Colombia	N	–	Y
Croatia	N	N	N
Cuba	Y	–	–
Denmark	N	N	N
Ecuador	N	N	Y
Egypt	N	N	N
Finland	N	N	N
France	N	Y	Y
Georgia	Y	Y	Y
Germany	N	N	N
Greece	N	–	Y
Haiti	Y	Y	Y
Iraq	Y	N	Y
Italy	N	Y	Y
Japan	N	N	Y
Jordan	N	Y	Y
Kenya	N	Y	Y
Kuwait	Y	Y	Y
Latvia	Y	–	N
Lesotho	N	N	N
Lithuania	Y	Y	Y
Luxembourg	N	–	N

State	Satisfied with current liability limits in force under the "Warsaw System" for		
	Passengers	Baggage	Cargo
Madagascar	N	N	N
Malawi	Y	Y	Y
Maldives	N	N	N
Mali	N	N	N
Micronesia, Federated States of	Y	Y	Y
Morocco	N	N	N
Netherlands, Kingdom of the	N	N	N
New Zealand	N	N	N
Nicaragua	N	N	N
Norway	N	N	N
Oman	N	N	N
Pakistan	Y	Y	Y
Peru	N	N	N
Poland	N	N	Y
Portugal	N	N	Y
Qatar	N	Y	Y
Republic of Moldova	Y	Y	Y
Russian Federation	Y	Y	Y
Saudi Arabia	N	Y	Y
Seychelles	Y	Y	Y
Singapore	N	N	N
Slovakia	N	N	N
Slovenia	Y	Y	N
Spain	N	Y	Y
Sweden	N	N	N
Switzerland	N	N	Y
Togo	N	N	N
Turkey	Y	Y	Y
Ukraine	Y	Y	Y
United Arab Emirates	N	Y	Y
United Kingdom	N	N	N
United States	N	N	Y
Uzbekistan	Y	Y	Y
Viet Nam	Y	Y	Y
Zambia	N	N	N
Zimbabwe	Y	Y	N

Table 2 – Air carrier satisfaction with the current liability limits in their countries
(based on replies to IATA questionnaire)

Region	Replies received	Dissatisfied	Percentage Dissatisfied
Africa	7	4	57
Asia/Pacific	11	7	64
Europe	20	15	75
Latin America/Caribbean	8	6	75
Middle East	5	4	80
North America	2	2	100
Total	53	38	72

Note: The above numbers and percentages represent the 53 air carriers (i.e. almost 23 per cent of the IATA Membership as at January 1995) who responded to the IATA questionnaire on airline liability.

Table 3 – Action taken to increase the passenger liability limits currently in force under the "Warsaw System"
(Question 3 of Attachment B to State letter EC 2/73-95/7 of 24 February 1995)

I - By Governments

State	Year	Passenger liability limit	To whom it applies	Remarks
Argentina	1976	250 000 French gold francs	All carriers (national and foreign)	Rate of exchange based on the *current* market price of gold. (250 000 gold francs are about USD 180 000)
Australia	1995	SDR 260 000	Qantas, Ansett	Foreign carriers on a voluntary basis
Belgium	1978	SDR 100 000	Sabena, Sobelair	
Denmark	1985	SDR 100 000	All Danish carriers	
ECAC States[1]	1994	At least SDR 250 000	All carriers of ECAC States	**Recommended** for new limit to be achieved through intercarrier agreement, based on Additional Montreal Protocol No. 3 adjusted for inflation
Italy	1988	SDR 100 000	All carriers (national and foreign)	Law 274/88
Saudi Arabia		SDR 100 000	All carriers (national and foreign)	By decision of the Presidency of Civil Aviation
Switzerland	1982	SDR 100 000	All Swiss carriers	Licensing requirement
Turkey		250 000 French gold francs	All carriers (national and foreign)	Rate of exchange based on the *current* market price of gold. (250 000 gold francs are about USD 180 000)
United Kingdom	1981	SDR 100 000	All UK carriers	Licensing requirement
United States	Pending	Unlimited	All carriers (national and foreign)	**Under consideration** for all international journeys ticketed in the United States and all United States citizens or permanent residents travelling internationally on tickets issued outside the United States.

[1] Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Kingdom of the, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom

II - By air carriers

State	Year	Passenger liability limit	To whom it applies	Remarks
-	1966	USD 75 000/ USD 58 000	All carriers flying to/from/through the United States	Montreal intercarrier agreement
Austria		SDR 100 000	Austrian Airlines, Lauda Air, Tyrolean Airways	
Brazil	1991	SDR 100 000	Varig	
Bulgaria	1992	SDR 100 000	Balkan - Bulgarian Airlines	
Canada	1986	SDR 100 000		
Colombia		SDR 100 000	Avianca	
Finland		SDR 100 000	Finnair	
France	1987	SDR 100 000	Air France, Air Inter	Intercarrier agreement
Germany	1994	SDR 250 000		
Japan	1992	unlimited	All Japanese carriers	
Luxembourg	1990	SDR 100 000	Luxair	
Madagascar	1989	SDR 100 000	Air Madagascar, TAM, Somacram	
Maldives	1995	USD 58 000	Air Maldives	
New Zealand	1995	SDR 100 000	Air New Zealand	
Portugal		SDR 100 000	TAP Air Portugal	
Sweden		SDR 100 000	SAS	
United Arab Emirates	1990	SDR 100 000	Emirates	
-	1995	No limit specified	Participating carriers	IATA intercarrier agreement (subject to government approval)

Table 4 – Passenger liability limits currently applied for domestic air carriage
(Part II of Attachment B to State letter EC 2/73-95/7 of 24 February 1995)

State	Year limit was updated	Passenger liability limit	Equivalent in U.S. Dollars[1]
Argentina	1967	1 000 argentinos oro	[2]
Australia	1994	AUD 500 000	370 000
Austria	1976	ATS 430 000	43 400
Azerbaijan	1994	100 x minimum wage	
Belgium		Warsaw/Hague: 250 000 French gold francs	20 000
Benin		USD 20 000	20 000
Bolivia		USD 10 000	10 000
Brazil	1986	USD 12 000	12 000
Bulgaria	1995	BGL 300 000	4 300
Burkina Faso	1969	250 000 units of account[3]	20 000
Canada		No government mandated limits	
Chile	1990	USD 130 000	130 000
Colombia	1971	USD 305 000	305 000
Croatia	1993	SDR 50 000	75 000
Cuba		Nationals: based on social security rules	
		Foreigners: USD 20 000	20 000
Denmark	1985	SDR 100 000	150 000
Ecuador	1993	ECS 45 000 000	17 000
Egypt	1981	Warsaw 125 000 French gold francs	10 000
Finland	1986	SDR 100 000	150 000
France	1989	FRF 750 000	154 300
Georgia	1994	SDR 16 600	24 900
Germany		DEM 320 000	227 200
Greece		GRD 4 000 000	17 200
Haiti		USD 75 000	75 000
Iraq		Warsaw/Hague: 250 000 French gold francs	20 000
Italy	1987	ITL 195 000 000	122 500
Japan	1975	Unlimited	UNLIMITED
Latvia		Warsaw/Hague: 250 000 French gold francs	20 000
Lesotho		Warsaw/Hague: 250 000 French gold francs	20 000
Lithuania	1994	No limit specified	
Malawi		USD 19 000	19 000
Maldives	1994	USD 20 000	20 000
Mali	1963	USD 20 000	20 000
Morocco		Warsaw/Hague: 250 000 French gold francs	20 000

State	Year limit was updated	Passenger liability limit	Equivalent in U.S. Dollars[1]
Netherlands, Kingdom of the	1960	Warsaw/Hague: 250 000 French gold francs	20 000
New Zealand		No right of action unless on an international journey	
Nicaragua	1961	USD 10 000	10 000
Norway	1993	SDR 100 000	150 000
Oman	1990	OMR 10 000	26 000
Pakistan	1993	PKR 500 000	14 600
Peru	1995	Unidades Impositivas Tributarias S/2000	
Poland		Unlimited	UNLIMITED
Portugal	1989	Indexed to the automobile insurance	
Qatar	1955	USD 20 000	20 000
Saudi Arabia		SAR 100 000	26 700
Seychelles	1967	FRF 875 000	180 000
Slovakia	1993	USD 20 000	20 000
Spain	1983	ESP 3 500 000	28 900
Sweden	1986	SDR 100 000	150 000
Switzerland	1963	CHF 200 000	175 700
Togo		Warsaw/Hague: 250 000 French gold francs	20 000
Turkey		Warsaw/Hague: 250 000 French gold francs	180 000[4]
Ukraine	1994	100 x minimum wage	
United Kingdom	1979	SDR 100 000	150 000
United States		Unlimited	UNLIMITED
Uzbekistan	1993	Ticket purchased in local currency: 40 x minimum wage[5]	200
		Ticket purchased in convertible currency: USD 20 000	20 000
Viet Nam	1995	USD 20 000	20 000
Zimbabwe		Warsaw/Hague: 250 000 French gold francs	20 000

[1] At November 1995 exchange rates (IATA Five Day Rate).

[2] Exchange rate set on a quarterly basis by the Argentinian Central Bank.

[3] A unit of account consists of 65.5 milligramme of gold of millesimal fineness 900 (equivalent to a French gold franc).

[4] Turkey applies the *current* market price of gold.

[5] The current minimum wage is 150 Sums (USD1 = 30 Sums).

Table 5 – International Conventions concerning passenger liability for other (non-aviation) modes of transport
(Part III of Attachment B to State letter EC 2/73-95/7 of 24 February 1995)

MARITIME TRANSPORT

Convention relating to the carriage of passengers and their luggage by sea
Athens, 13 December 1974
- Protocol, London 1976 (passenger liability limit in force: SDR 46 666)
- Protocol, London 1990 (not in force: SDR 175 000)

RAIL

COTIF - Convention concerning international carriage by rail
Berne, 9 May 1980 (passenger liability limit in force: SDR 70 000)

Appendix A - CIV - International convention concerning the carriage of passengers and luggage by rail
Berne, 25 February - 1 May 1961
- Protocol A, Berne, 29 April - 1 November 1964
- Protocol B, Berne, 26 February - 1 July 1966
- Protocol I, Berne, 22 October - 31 December 1971

Appendix B - CIM - International convention concerning the carriage of goods by rail
Berne, 25 February - 1 May 1961
- Protocol A, Berne, 29 April - 1 November 1964
- Protocol, Berne, 7 February - 30 April 1970
- Protocol I, Berne, 9 November - 31 January 1974

ROAD

CVR - Convention on the contract for international carriage of passengers and luggage by road
Geneva, 1973 (passenger liability limit in force: 250 000 gold francs [1])
- Protocol, Geneva, 1978 (not in force: SDR 83 333)

INLAND WATERWAYS

CVN - Convention on the contract for the international carriage of passenger and luggage by inland waterways
Geneva, 6 February 1976 (not in force: 200 000 gold francs [1])
- Protocol, Geneva 1978 (not in force: SDR 66 667)

[1] A gold franc corresponds to 10/31 grammes of gold of 900 millesimal fineness.

Table 6 – New passenger liability limits which would satisfy States' requirements[1]
(Question 2 of Attachment B to State letter EC 2/73-95/7 of 24 February 1995)

SDR[2] **20 000**
Benin
Ecuador
Mali

SDR 50 000
Bolivia
Burkina Faso[3]
Burundi
Oman

SDR 75 000
Bahrain

SDR 100 000
Argentina
Bulgaria
Canada[3]
Chile
Colombia
Egypt
Greece
Jordan
Kenya
Madagascar
Maldives
Morocco
Peru
Poland
Qatar
Saudi Arabia
Togo
United Arab Emirates

SDR 150 000
Nicaragua

SDR 200 000
Croatia
Lesotho
Luxembourg

SDR 250 000
Australia
Austria[3]
Belgium
Brazil
France
Germany
Italy
Netherlands, Kingdom of the[3]
Norway[3]
Portugal
Singapore
Slovakia
Spain
United Kingdom[3]

SDR 300 000
Denmark
New Zealand

SDR 500 000
Finland
Sweden

SRD 700 000
Zambia

Unlimited
Japan
Switzerland
United States

[1] The figures shown are purely indicative for the purpose of this study and in no way represent a binding commitment by a State in respect of its future position regarding the "Warsaw System" or any other approach to air carrier liability. Furthermore, the table itself does not include the following 20 States which find the current passenger liability limits under the "Warsaw System" satisfactory: Azerbaijan, Cuba, Georgia, Haiti, Iraq, Kuwait, Latvia, Lithuania, Malawi, Micronesia, Federated States of, Pakistan, Republic of Moldova, Russian Federation, Seychelles, Slovenia, Turkey, Ukraine, Uzbekistan, Viet Nam, Zimbabwe.

[2] SDR 1 = USD 1.50 (IATA Five Day Rate for November 1995).

[3] "At least" SDR figure quoted.

Table 7 – New baggage liability limits which would satisfy States' requirements[1]
(Question 7 of Attachment B to State letter EC 2/73-95/7 of 24 February 1995)

Per kg

SDR[2] **20**
Bahrain
Madagascar

SDR 43
Switzerland

SDR 50
Azerbaijan
Brazil
Burkina Faso
Croatia
Germany
Iraq
Lesotho
Mali
Morocco
Nicaragua
Oman
Togo

SDR 100
Benin
Bolivia
Egypt
Maldives
Peru
Sweden

SDR 150
Zambia

Per passenger

SDR 400
Bahrain
Madagascar

SDR 1 000
Azerbaijan
Bolivia
Canada
Chile
Croatia
Ecuador
Iraq
Morocco
Oman
Poland
Togo

SDR 2 000
Benin
Finland
Germany
Norway
Slovakia
Sweden
United States

SDR 2 500
Switzerland
United Kingdom[3]

Per passenger (cont'd)

SDR 3 000
Burundi
Egypt
Maldives
New Zealand

SDR 4 000
Argentina

SDR 5 000
Denmark

SDR 7 000
Zambia

Limit unspecified
Austria
Belgium
Japan
Netherlands, Kingdom of the
Poland
Portugal
Singapore

[1] The figures shown are purely indicative for the purpose of this study and in no way represent a binding commitment by a State in respect of its future position regarding the "Warsaw System" or any other approach to air carrier liability. Furthermore, the table itself does not include the following 26 States which find the current limits under the "Warsaw System" satisfactory: Australia, Bulgaria, France, Georgia, Haiti, Italy, Jordan, Kenya, Kuwait, Lithuania, Malawi, Micronesia, Federated States of, Pakistan, Qatar, Republic of Moldova, Russian Federation, Saudi Arabia, Seychelles, Slovenia, Spain, Turkey, Ukraine, United Arab Emirates, Uzbekistan, Viet Nam, Zimbabwe.

[2] SDR 1 = USD 1.50 (IATA Five Day Rate for November 1995).

[3] "At least" SDR figure quoted.

Table 8 – New cargo liability limits which would satisfy States' requirements[1]
(Question 9 of Attachment B to State letter EC 2/73-95/7 of 24 February 1995)

SDR[2] **17 per kg**
Australia
Belgium
Slovakia

SDR 20 per kg
Chile
Madagascar
Mali
Peru
Singapore
Zambia

SDR 40 per kg
Azerbaijan
Benin
Brazil
Croatia
Egypt
Latvia
Lesotho
Luxembourg
Morocco
Nicaragua

SDR 43 per kg
United Kingdom[3]

SDR 50 per kg
Slovenia
Togo

SDR 60 per kg
Finland
Oman
Sweden

SDR 80 per kg
Germany
Switzerland

SDR 100 per kg
Argentina
Burundi
Denmark
Maldives

Limit Unspecified
Austria
Netherlands, Kingdom of the
Norway
Zimbabwe

[1] The figures shown are purely indicative for the purpose of this study and in no way represent a binding commitment by a State in respect of its future position regarding the "Warsaw System" or any other approach to air carrier liability. Furthermore, the table itself does not include the following 35 States which find the current limits under the "Warsaw System" satisfactory: Bahrain, Bulgaria, Burkina Faso, Canada, Colombia, Ecuador, France, Georgia, Greece, Haiti, Iraq, Italy, Japan, Jordan, Kenya, Kuwait, Lithuania, Malawi, Micronesia, Federated States of, Pakistan, Poland, Portugal, Qatar, Republic of Moldova, Russian Federation, Saudi Arabia, Seychelles, Spain, Switzerland, Turkey, Ukraine, United Arab Emirates, United States, Uzbekistan, Viet Nam.

[2] SDR 1 = USD 1.50 (IATA Five Day Rate for November 1995).

[3] "At least" SDR figure quoted.

– END –

AT-WP/1773
27/12/95

WORKING PAPER

INTERNATIONAL CIVIL AVIATION ORGANIZATION

147TH SESSION OF THE COUNCIL

AIR TRANSPORT COMMITTEE

Subject No. 15: Subjects Relating to Air Transport

SOCIO-ECONOMIC ANALYSIS OF AIR CARRIER LIABILITY LIMITS 1) AIR CARRIER INPUT ON INSURANCE COVER AND COST; AND 2) IATA INTERCARRIER AGREEMENT

(Presented by the Observer from IATA)

REFERENCES

AT-WP/1769

1. Introduction

1.1 This accompanies the ICAO Secretariat paper as part of the joint socio-economic study on air carrier liability limits. In particular, this paper summarizes the responses to the IATA questionnaire regarding insurance cover and costs for IATA Members,[1] in the event of an increase in air carrier liability limits. This summary is followed by a brief overview of the IATA Intercarrier Agreement recently endorsed by the 51st Annual General Meeting of IATA.

2. Insurance Cover and Insurance Costs

2.1 Twenty-eight out of 50 air carriers (56 per cent) believed that an update of the passenger liability limits[2] would require an increase in their present insurance coverage regarding passenger

(8 pages)

[1] Fifty-three out of 227 IATA Members responded to the questionnaire. Please see Appendix A for the regional breakdown.

[2] The extent of the updates of the liability limits is described at paragraphs 10 to 14 of AT-WP/1769.

liability. The regional breakdown among those air carriers was 3 out of 6 in Africa, 3 out of 8 in Latin America/Caribbean, 5 out of 11 in Asia/Pacific, 14 out of 16 in Europe, 2 out of 6 in the Middle East and 0 out of 2 in North America. A majority of air carriers not anticipating increases in their present insurance coverage regarding passenger liability had either: a) indicated earlier in the questionnaire the adequacy of the air carrier liability limits in force in their respective countries; or b) indicated that, as a result of the inadequacy of the limits, they had adopted initiatives to unilaterally raise the limits and, presumably, would already be insured for this higher risk.

2.2 In the event of an increase in the limit, the estimated increase in insurance premium for the policy covering *inter alia* passenger liability ranged from 0 to 150 per cent. The ranges per region were 10 to 30 per cent in Africa, 35 per cent in Latin America/Caribbean[3], 5 to 50 per cent in Europe, 100 per cent in the Middle East, and 25 to 150 per cent in Asia/Pacific.[4] Some of the air carriers pointed out that any increase to the premium would be dependent upon the behaviour of the particular insurance company and the London insurance market; some predicated their estimates of a high increase in premiums upon liability limits up to SDR250,000. One air carrier estimated an increase of 25 per cent if all airlines adopted higher limits.

2.3 The estimated increase in insurance premiums regarding the air carriers' total insurance premium costs per year ranged from 0 to 50 per cent. The ranges per region were 3 to 30 per cent in Africa, 10 per cent in Latin America/Caribbean, 0.55 to 15 per cent in Europe, 33 per cent in the Middle East, and 8.42 to 50 per cent in Asia/Pacific. One air carrier estimating no increase believed that cost savings on legal fees would offset any increased payments for passenger claims.

2.4 In 1993, the percentage of insurance cost in relation to the total yearly operating cost of the air carriers ranged from 0.0023 to less than 10 per cent. The ranges per region were 1 to less than 10 per cent in Africa, 0.0023 to 5 per cent in Latin America/Caribbean, 0.6 to 4.6 per cent in Europe, 0.08 to 0.58 per cent in the Middle East, and 0.2 to 1.5 per cent in Asia/Pacific.

3. Baggage and Cargo

3.1 Fewer air carriers anticipated an increase in passenger and baggage insurance premiums as a result of increased liability limits for baggage. Only 17 out of 43 (40 per cent) felt that an update of the liability limits would require an increase in their present insurance coverage regarding baggage liability. The estimated increase in insurance premium when compared with the present premium regarding the policy covering *inter alia* baggage liability ranged from 0 to 30 per cent. The estimated increase in insurance premiums regarding the air carriers' total insurance premium costs per year ranged from 0.05 per cent to 30 per cent.

3.2 Only 16 out of 45 air carriers (35 per cent) suggested that an update of the liability limits would require an increase in their present insurance coverage regarding cargo liability. The estimated increase in insurance premium when compared with the present premium regarding the policy covering *inter alia* cargo liability ranged from 10 to 30 per cent. The estimated increase in insurance premiums

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[3] Only one air carrier responded where one figure is quoted.

[4] These ranges are speculative in that many of the air carriers anticipating increases to their premiums did not provide specific figures.

regarding the air carriers' total insurance premium costs per year ranged from 0.01 per cent to 30 per cent.

4. IATA Intercarrier Agreement

4.1 The 51st Annual General Meeting of IATA ("AGM") in Kuala Lumpur endorsed the IATA Intercarrier Agreement (IIA) on passenger liability[5] which was signed at an initial signing ceremony on 31 October 1995 by twelve (12) carriers from the five geographic regions.[6] The IIA, which is to be applicable world-wide, is an "umbrella" accord, designed to enhance benefits to passengers while preserving the Warsaw regime and permit maximum flexibility to airlines in the development of conditions of carriage and tariff filings, taking into account normal practice and applicable governmental regulations.

4.2 The IIA adopts a universal waiver of limits approach to passenger liability. Key reasons for adopting this approach were that any numerical limit would: a) continue to attract litigation; b) become a baseline for settlement negotiations and a "target" for claims; c) need to be regularly updated for inflation; and d) in any case require a "second tier" mechanism for the US, EU, Japan, Australia and elsewhere, creating serious implementation and harmonisation difficulties.

4.3 Items c) and d) are dealt with in the IATA and ICAO questionnaires. For instance, the State and air carrier responses confirm the perceived need to periodically update the numerical limits for inflation but indicate general disagreement as to when and how this should be done. A significant number of States (30) and air carriers (31) prefer to convene regular meetings and stipulate changes to the limit. However, the failure to bring into force Montreal Protocol 3 demonstrates how difficult it can be to achieve agreement among governments on the level of liability limits. One of the principal aims of the IIA's universal waiver of liability limits is to make this issue irrelevant.

4.4 The IIA provides for the waiver of limits by the carrier so as to allow for "recoverable compensatory damages" in respect of death or injury to passengers. The carriers signatory to the IIA undertake to waive the limitations of liability set out in the Warsaw Convention (1929), the Hague Protocol (1955) and/or limits they may have previously agreed to implement or were required by Governments to implement. It is clear from the responses to both questionnaires that the "second tier" mechanism, i.e. a waiver up to a specific amount (e.g. no less than SDR250,000 as originally proposed under ECAC) is not universally endorsed. A universal waiver of limits and retention by air carriers of their defences under the Warsaw System[7] would however, seem to meet the concerns of the respondents in that carriers (either voluntarily as is the case in Japan, or as may be required by governments) would have the option to waive defences in whole or in part.

4.5 The waiver of liability limits by a carrier may be only to the extent required to permit the law of the domicile of the passenger to govern the determination and award of the recoverable

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[5] A copy of the IIA is attached as Appendix B.

[6] The twelve carriers include: Air Canada, Air Mauritius, Austrian Airlines, Canadian Airlines International, Egyptair, Japan Airlines, KLM Royal Dutch Airlines, Saudi Arabian Airlines, Scandinavian Airline Systems, South African Airways, Swissair and TACA.

[7] The Warsaw Convention defences remain available to the carriers signatory to the IIA, unless a carrier decides to waive them, in whole or in part, or is so required by government.

compensatory damages under the IIA. The application of domiciliary law for the calculation of the damages could be a post-accident election by the claimant (who otherwise could continue to rely on the Convention and Hague Protocol since the 1966 Montreal Agreement will be superseded by the IIA). Essentially, the passenger would be put on notice that in the event of an accident, a claimant would be entitled to choose to remain within the limits of the Warsaw Convention or Hague Protocol, or have the airline waive the limits in favour of the law of the domicile (or completely, depending upon the terms of the applicable Special Contract) in the form of amended conditions of carriage and amended tariffs introduced by the airline(s) for their passengers. If the claimant opted out of Warsaw/Hague, then the claimant would be entitled to the full compensation by reference to the rules of the passenger's domicile, regardless of where the claim is brought and regardless of the place of departure or destination.

4.6 Although calculation of damages by reference to the law of the domicile of the passenger might benefit airlines from developing countries through possible lower risk exposure, it would be optional. Should a carrier wish to waive the limits of liability entirely and not insist on the law of the domicile of the passenger governing the calculation of the recoverable compensatory damages, it could simply allow the law of the court to which the case is submitted to govern, unless otherwise required by applicable law.

4.7 Insurance costs related to the new IIA could be mitigated because: airlines flying to, through or from the USA already face the risk of current Warsaw/Hague/Montreal Agreement levels being broken under the "wilful misconduct" provision, and insurers take this into account in setting premiums; the proposal that recoverable damages may be calculated according to the law of the domicile of the passenger could also result in lower settlements and thus reduce exposure; the insurance markets have indicated they favour the waiver of limits as better reflecting the real long term costs of compensatory damages. In addition, absent the "wilful misconduct"/breaking the limits syndrome, the incidence of litigation should be reduced and more reasonable settlements agreed with claimants.

4.8 The AGM called upon Member airlines to sign the IIA and seek the requisite governmental approvals as soon as possible so that the Agreement can come into force by 1 November 1996 or when requisite governments have approved it (whichever is later). This would allow at least one year for discussion with the insurance industry, taking into account the need to amend liability coverage on the carriers' respective insurance renewal dates.

4.9 As of 18 December 1995, twenty-one carriers have signed the IIA.[8]

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[8] In addition to the original twelve, the following carriers have signed the IIA: Aer Lingus, Aeromexpress, Air Afrique, Finnair, Icelandair, Kenya Airways, LAPSA Air Paraguay, Trinidad & Tobago BWIA International and Jet Airways (India).

APPENDIX A

The following numbers and percentages represent the 53 Air Carriers (i.e. almost 23 per cent of the IATA Membership as at January 1995) who responded to the IATA questionnaire on airline liability.

AFRICA	7	13 per cent
ASIA/PACIFIC	11	21 per cent
CENTRAL AMERICA	2	4 per cent
EUROPE	20	38 per cent
MIDDLE EAST	5	9 per cent
NORTH AMERICA	2	4 per cent
SOUTH AMERICA	6	11 per cent
TOTAL	53	

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APPENDIX B

IATA INTERCARRIER AGREEMENT ON PASSENGER LIABILITY

WHEREAS: The Warsaw Convention system is of great benefit to international air transportation; and

NOTING THAT: The Convention's limits of liability, which have not been amended since 1955, are now grossly inadequate in most countries and that international airlines have previously acted together to increase them to the benefit of passengers;

The undersigned carriers agree

1. To take action to waive the limitation of liability on recoverable compensatory damages in Article 22 paragraph 1 of the Warsaw Convention as to claims for death, wounding or other bodily injury of a passenger within the meaning of Article 17 of the Convention, so that recoverable compensatory damages may be determined and awarded by reference to the law of the domicile of the passenger.

2. To reserve all available defences pursuant to the provisions of the Convention; nevertheless, any carrier may waive any defence, including the waiver of any defence up to a specified monetary amount of recoverable compensatory damages, as circumstances may warrant.

3. To reserve their rights of recourse against any other person, including rights of contribution or indemnity, with respect to any sums paid by the carrier.

4. To encourage other airlines involved in the international carriage of passengers to apply the terms of this Agreement to such carriage.

5. To implement the provisions of this Agreement no later than 1 November 1996 or upon receipt of requisite government approvals, whichever is later.

6. That nothing in this Agreement shall affect the rights of the passenger or the claimant otherwise available under the Convention.

7. That this Agreement may be signed in any number of counterparts, all of which shall constitute one Agreement. Any carrier may become a party to this Agreement by signing a counterpart hereof and depositing it with the Director General of the International Air Transport Association (IATA).

8. That any carrier party hereto may withdraw from this Agreement by giving twelve (12) months' written notice of withdrawal to the Director General of IATA and to the other carriers parties to the Agreement.

Signed this 31st day of October 1995

Air Canada
Air Mauritius
Austrian Airlines
Canadian Airlines International
Egyptair
Japan Airlines
KLM Royal Dutch Airlines
Saudi Arabian Airlines
Scandinavian Airline Systems
South African Airways
Swissair
TACA

IATA INTERCARRIER AGREEMENT ON PASSENGER LIABILITY

EXPLANATORY NOTE

The IATA Intercarrier Agreement is an "umbrella accord"; the precise legal rights and responsibilities of the signatory carriers with respect to passengers will be spelled out in the applicable Conditions of Carriage and tariff filings.

The carriers signatory to the Agreement undertake to waive such limitations of liability as are set out in the Warsaw Convention (1929), The Hague Protocol (1955), the Montreal Agreement of 1966, and/or limits they may have previously agreed to implement or were required by Governments to implement.

Such waiver by a carrier may be made conditional on the law of the domicile of the passenger governing the calculation of the recoverable compensatory damages under the IIA. But this is an option. Should a carrier wish to waive the limits of liability but not insist on the law of the domicile of the passenger governing the calculation of the recoverable compensatory damages, or not be so required by a governmental authority, it may rely on the law of the court to which the case is submitted.

The Warsaw Convention system defences will remain available, in whole or in part, to the carriers signatory to the Agreement, unless a carrier decides to waive them or is so required by a governmental authority.

– END –

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DCW Doc No. 31
17/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10-28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

COMMENTS ON ARTICLES 16 AND 27

(Presented by Colombia)

1. INTRODUCTION

Colombia expresses its desire and understands the need and advisability, at the meetings which will be held to discuss the agenda drawn up in order to update and modernize the 1929 Warsaw System, to cooperate as much as it can to make the best possible contribution to reaching such a worthy and desired goal as achieving a universal instrument as proposed by ICAO, with the support and backing of the Contracting States and invited organizations which have responded to the appeal by the Council of ICAO to attend this great event.

2. PROPOSALS, JUSTIFICATIONS AND COMMENTS

a) Proposal with regard to Article 16.1

- We believe that the words "or mental" should be inserted in the first line as well as the words "or incident" in the second line after "accident". Article 16.1 would thus read:

"CHAPTER III

"Liability of the Carrier and Extent of Compensation for Damage

"Article 16 - Death and Injury of Passengers - Damage to Baggage

"1. The carrier is liable for damage sustained in case of death or bodily or mental injury of a passenger upon condition only that the accident or incident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable to the extent that the death or injury resulted from the state of health of the passenger."

b) **Justification**

(1) The initial Warsaw Convention only covered bodily injury. We believe that there is a difference between bodily and mental injuries, but the current draft of DCW Doc No. 3 does not take account of this difference. However, the earlier draft which was approved by the **Legal Committee did so**.

The initial Warsaw Convention only covers bodily injury and the Guatemala Protocol of 1971 refers to a passenger's personal injuries. We feel that there is no ethical, medical or legal reason not to include mental injury.

(2) Although the proposal which we are making with regard to the second line of Article 16.1 to add the words "or incident" after "accident" is a purely formal matter, we believe that the correction should be made since there can obviously be cases of "incidents" which cause some type of (slight) bodily or mental injury which might not necessarily be serious as is inferred from the definition of accident in accordance with Annex 13 to the Chicago Convention.

c) **Proposal concerning Article 27: Fifth Jurisdiction**

- Colombia fully shares the interest in including a fifth jurisdiction in the Convention as drafted in the proposal in DCW Doc No. 3, but **excluding** the paragraph 3 *bis* text between brackets.

  This approach coincides with the consensus expressed at the 3rd meeting of the group of experts on political, economic and legal air transport matters held in Argentina from 23 to 25 March 1999. It also coincides with the proposal of LACAC and many other countries.

d) **Justification**

- Our country considers it advisable that passengers be entitled to a new jurisdiction as expressed in the ICAO proposal, **except for** the 3 *bis* text in brackets, making it possible to have a trial in the country where they reside permanently.

  This fifth jurisdiction had already been contemplated earlier in the Guatemala Protocol of 1971 and Montreal Protocol No. 3 of 1975.

  With a fifth jurisdiction, passengers can elect to claim compensation for death or bodily or mental injury in their country, avoiding the high costs involved in travel, accommodation, etc., if the trial is held outside the place where they have their permanent residence. We believe that the best court is the one where the person concerned lives.

– END –

DCW Doc No. 32
19/5/99
English only

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10-28 May 1999)

DEFINITION OF BENEFICIARY IN ARTICLE 16

(Presented by International Union of Aviation Insurers – IUAI)

The Observer representing the International Union of Aviation Insurers suggested at the Fourth Meeting of the Commission of the Whole that there should be a definition of the beneficiary(ies) of the carrier's liability. The Chairman suggested that the definition should more properly attach to Article 19.

The suggestion of the IUAI is that the following words be added to Article 16(1) or at the direction of the Chairman and with the necessary consequential amendments, to Article 19:

> "The liability imposed in this section shall be solely and exclusively towards the passenger and those natural persons entitled to claim following the death or bodily injury of the passenger and shall specifically exclude claims from any other party which may, by operation of contractual or statutory subrogation or otherwise be entitled to make a claim."

The justification for this proposal is as follows :

1. The third sentence in the preamble to the Draft Convention provides that it is important to ensure protection of the the interests of consumers. This justifies the imposition of strict and unlimited liability on Carriers. This is not, however, a justification for imposing strict liability on Carrier for the benefit of non-consumers such as subrogated insurance companies, which will, in some cases, be the principal beneficiaries of strict unlimited liability.

2. There is nothing equitable in compensating subrogees, who have taken payments for the provision of their services since this effectively entitles them to a double recovery, firstly of premiums or their equivalent, and then of the benefits which they are obliged to provide. Their entitlement to this double benefit by virtue of the present provisions of the Draft Convention is contrary to the intention expressed in the last part of the third sentence in the preamble.

3. The desirability of achieving an equitable balance of interests is recognized in the final sentence of the preamble. The balance has been recognized by many distinguished delegates to this Conference as being between the interests of the consumer in being fully compensated and the interests of States and ICAO in the orderly development of international air transport operations by protecting carriers inter alia from excessive financial demands - at least to the extent that protection does not injure consumers. Imposing on Carriers the burden of strict unlimited liability to third parties represents an unnecessary departure form this balance which will have, in some cases, very considerable financial consequences.

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DCW Doc No. 33
17/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10-28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

ARTICLE 27 - FIFTH JURISDICTION

(Presented by France)

France expresses strong objections to the plan to create a fifth jurisdiction as provided for in the current text of Article 27 of the draft Convention, for three reasons:

– this new jurisdiction is not really necessary to protect passengers;

– its operation would have unfortunate consequences for the development of international air transport;

– granting it would create a regrettable precedent in the development of contemporary law.

I/ THE CREATION OF A FIFTH JURISDICTION IS NOT NECESSARY TO PROTECT PASSENGERS:

a) Everyone agrees that the four existing jurisdictional possibilities are satisfactory:

– The possibility for a victim of damage or his successors to bring their action before one of the four jurisdictions under the Warsaw Convention, as reiterated in Article 27.1 of the draft, makes it possible to settle the vast majority of cases, as acknowledged even by those who defend the creation of a fifth jurisdiction and who confirm that the latter would only come into play in a very limited number of cases.

– The compensation currently awarded to victims reaches very satisfactory levels in the countries which advocate the creation of this jurisdiction owing to the renunciation by the airlines concerned of the limits of the Warsaw Convention. Some figures, from US$ 2 to 2.5 million on average per deceased victim, are thus regularly mentioned.

– It is logical therefore that the airlines, including the largest of them, are not asking for the creation of this new jurisdiction, although they now accept the principle of unlimited liability. It is significant that no request of this type appears in the document presented by IATA (Doc No. 9).

In other words, the creation of a fifth jurisdiction is not a requirement of world air transport.

b) The creation of such a jurisdiction might even be detrimental to passengers: it could have two unfavourable consequences:

– As indicated in the note presented by IUAI (Doc No. 28), it would inevitably result in an increase in the compensation paid owing to systematic efforts to obtain the most generous judge and consequently a substantial increase in insurance premiums. To that would be added the aggravating circumstance that travellers from the least developed countries in terms of compensation would subsidize those from the countries where the highest compensation is paid, owing to the mutualization of risks.

– The creation of a fifth jurisdiction would make it easier to reject claims submitted by foreign citizens in the most generous countries. The judges in those countries would have fewer scruples in using legal means (e.g., the theory of *forum non conveniens*, as set out in Doc No. 27) which enable them to turn down a foreign claimant, on the grounds of the existence of a competent court under the fifth jurisdiction in his country of origin. Consequently, having paid more as a result of the new system, many travellers could find themselves in the paradoxical situation of receiving less compensation than at present in case of an accident.

c) An improvement in the passengers' lot should be sought elsewhere:

– It is the elimination of the limits which Article 20 sets on carrier liability, and not the creation of a fifth jurisdiction, which should ensure better treatment of passengers in case of an accident.

– The new liability system should already result in a substantial medium-term increase in insurance premiums and the financial risks taken by the airlines and it is not necessary to aggravate that prospect further through the creation of a fifth jurisdiction.

II/ THE OPERATION OF A FIFTH JURISDICTION WOULD THUS HAVE UNFORTUNATE CONSEQUENCES FOR THE DEVELOPMENT OF INTERNATIONAL AIR TRANSPORT

This additional jurisdiction would enable at least the citizens of the most generous countries to systematically bring their compensation claims there as well as foreign citizens who would not be excluded by legal means such as the theory of *forum non conveniens*. A sharp increase in compensation could only result therefrom globally, causing an increase in insurance premiums as indicated in Doc No. 28 and therefore in ticket prices. The financial reserves of the airlines could be affected where the insurance companies' guarantee did not come into play.

By definition, this increase in costs would not be favourable to the growth of international air transport. It could even seriously hamper it by jeopardizing airlines with modest resources. This would run counter to one of ICAO's fundamental objectives, that of promoting the participation of all in the development of world air transport as recognized by the recommendation of the Air Transport Conference held in Montreal in 1994:

– paragraph 7 ("the Contracting States share the same fundamental objective of increased participation as a reliable and sustained presence in the worldwide air transport system"),

– and paragraph 9 ("in any change of approach with regard to the regulation of international air transport, all the necessary attention should be paid to the objective of participation and (para. 5) the disparity in economic development levels among States").

III/ CREATING AN ADDITIONAL JURISDICTION WOULD RESULT IN A REGRETTABLE DEVELOPMENT IN THE COURSE OF CONTEMPORARY LAW

a) The current wording of Article 27.2 has the result of making the complainant's nationality the true criterion by means of which a judge could be seized. The conditions for implementing Article 27.2 show this:

– The notion of the passenger's "principal and permanent residence" contained therein is a new category in international law. So far, the reference has been to "domicile or permanent residence" as indicated in the Guatemala Protocol, which is mentioned so often, or "domicile or habitual residence" (Athens Convention). Consequently, no one can say what would be the legal consequences of the new expression. It is to be feared that it corresponds to the notion of "permanent abode", to which the person concerned intends to return even if he lives elsewhere temporarily. Such an interpretation could easily be given by the courts. It is therefore the claimant's nationality which would become the decisive element. A citizen of a given country would thus be able to escape the jurisdiction of a foreign country and would have the assurance of being judged in his country in accordance with its legislation. A true jurisdictional privilege would thus be created.

– Other conditions are laid down for the application of Article 27.2: the carrier must operate services for carriage by air in that country and conduct similar business in premises which it leases or owns, unless they belong to another carrier with which it has a commercial agreement. But these expressions are very vague and very broad in application. They can relate to business as diverse as charter operations, code sharing, alliances or a commercial agreement which is varied and broad in scope. We therefore remain in the very vague perspective of "doing business". It appears therefore that the main element must be the claimant's nationality.

b) Making the latter the true means of seizing a judge would be a step backwards in the development of contemporary international law since a true jurisdiction of nationality would be established. This would run counter to the recent instruments:

– For example, Article 4 of the protocol supplementary to The Hague Convention of 1 February 1971 on recognition and enforcement of foreign civil and commercial judgments gives a list of grounds for competence which are not acceptable at the international level: they are the claimant's nationality, his domicile or habitual residence, or a commercial activity (doing business). These three grounds for competence should have less and less place in the development of law, contrary to what is proposed in Article 27.2 of the draft. In a more general way, the conventional system rejects jurisdictional privileges which would result in the international extension of domestic law.

– The 1968 Brussels Convention on judicial competence and enforcement of legal decisions between member States of the European Union and the 1996 Lugano Convention for the EFTA countries exclude fifth jurisdiction mechanisms. No precedent to the contrary can be drawn from the Guatemala Protocol since it has never entered into force.

c) The creation of a fifth jurisdiction might set a dangerous precedent applicable in other fields which have nothing to do with air law and its special characteristics. Instead of making progress towards the unification and internationalization of law with a view to identical treatment for persons coming under a single worldwide legal system, the result would be the further fragmentation of international law.

This danger is recognized in general, including by the countries which are favourable to the creation of a fifth jurisdiction in international air law but which elsewhere, for example in the negotiations on the draft global convention on court competence, which is currently being discussed, invoke the above-mentioned supplementary protocol to The Hague Convention so that the criteria of nationality, residence and business activity are taken into consideration less and less.

XXX

Not desired by international air transport professionals and not conducive to its growth, the creation of a fifth jurisdiction would thus be less favourable than expected for passengers. The French Delegation recalls that, in a spirit of compromise, it included a clause in paragraph 3 *bis* of Article 27 enabling States not wishing to subscribe to it to set it aside.

– END –

DCW Doc No. 34
17/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

FINAL CLAUSES

ARTICLE 52 - STATES WITH MORE THAN ONE SYSTEM OF LAW

(Presented by China)

1. PROPOSAL

1.1 It is proposed that the following article be added as Article 52 of the Convention:

"States with more than One System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law applicable in different territorial units in relation to matters dealt with in this Convention -

(a) references in Article 21B to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) references in Article 45 to "States Parties" and "State" shall be construed as referring to the relevant territorial unit of that State."

2. REASONS

2.1 The draft article is based on precedents in other multilateral treaties dealing with questions of civil liability, and is not a novelty. Such an article takes account of the fact that sometimes different systems of law are practised in different territorial units under the sovereignty of a single State. It therefore facilitates the implementation of the Convention in different territorial units of such a State. The draft article also serves to clarify the meaning of certain terms in the Convention so as to make the references more appropriate in their application to a territorial unit.

(2 pages)

2.2 The matter is of particular interest to China because the Hong Kong Special Administrative Region ("HKSAR") maintains its own systems in various respects such as its own system of law and its own judiciary, own economic and monetary system. The HKSAR keeps its own aircraft register. The application to the HKSAR of international agreements to which China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the government of the HKSAR. As the article is drafted in general terms, it will not only facilitate the implementation of the Convention in China but also in any other States in which different systems of law exist.

2.3 An article of this type is in accordance with modern treaty practice, and appears in other international conventions such as several drawn up by the Hague Conference on Private International Law. China is one of almost 50 States which are members of the Hague Conference. Many other States are also parties to one or more of the 34 conventions adopted by the Hague Conference.

2.4 A further, and very recent, example of such an article is in the Convention on Arrests of Ships 1999, which was adopted in Geneva in March this year.

- END -

DCW Doc No. 35
18/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10-28 May 1999)

SUMMARY REPORT ON THE FIRST AND SECOND MEETINGS OF THE "FRIENDS OF THE CHAIRMAN" GROUP

1. First Meeting, 17 May 1999

1.1 The Group reviewed draft Article 16, paragraph 1 and to what extent "mental injury" should be recognized as a separate type of damage for the purpose of the new Convention. In relation to this point, the Group reiterated the importance of reaching a clear understanding as to the intended scope of that term, taking into account the preliminary conclusions which had been reached within the Commission of the Whole.

1.2 A consensus in principle emerged that apart from "bodily injury", recovery shall also be available in case of "mental injury" associated with or arising from bodily injury. As to the latter point, the Group acknowledged that already at the present time, a number of Courts interpreted the term "bodily injury" as encompassing this type of mental injury, and that any extension of this notion should not be construed in a way so as to invalidate these existing precedents.

1.3 After further discussion, the Group agreed that the new Convention should also recognize mental injury standing alone as a separate type of recoverable damage, provided that it results in an impairment which has a significant adverse effect on the health of the passenger. Having identified the three elements which are involved, namely,

- bodily injury;
- mental injury associated with bodily injury; and
- mental injury which has a significant adverse effect on the health of the passenger,

the Group decided to refer this matter to the Drafting Committee, which was tasked to find suitable wording regarding these elements, for further consideration by the Commission of the Whole.

1.4 The Group also considered draft Article 16, paragraph 1, last sentence, particularly whether to retain, amend or delete this clause in light of the understanding on the issue of "mental injury" referred to above. A number of divergent views were expressed. The Chairman proposed, and the Group agreed, to retain the present wording as contained in DCW Doc No. 3 on the understanding that the state of health of a passenger would merely be taken into account insofar as the intensity of the injury is concerned.

1.5 The Group commenced discussions on draft Article 20 and deliberated on some practical aspects of this provision. It confirmed the understanding that draft Article 19 shall also be applicable in the first tier of liability. The Group decided to continue its deliberations on draft Article 20 at the next meeting of the Group.

2. Second Meeting, 18 May 1999

2.1 The Group continued its deliberations on draft Article 20 as contained in DCW Doc No. 3 and reviewed the various proposals contained in DCW Doc Nos. 18, 21, 24, 29, as well as the proposal made by Pakistan.

2.2 Two common elements in these proposals were identified:

- strict liability in the first tier up to 100,000 SDR;
- unlimited liability.

The Group considered various proposals establishing a two-tier or three-tier liability regime, respectively. The Chairman concluded the discussion by stating that further consultation on this matter was required, having also due regard to the outstanding issues in relation to other draft Articles, particularly Article 27.

– END –

DCW Doc No. 36
19/9/99

INTERNATIONAL CONFERENCE ON AIR LAW
(Montreal, 10-28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

(Presented by France)

In Doc No. 33, France presented the series of observations which had, in its opinion, given rise to the idea of introducing a fifth jurisdiction mechanism into Article 27.2 of the draft Convention.

In section III a) on page 3 of that document, France indicated, in particular, how the notions of the passenger's "principal and permanent residence"and the application conditions relating to the carrier's services and business were vague and imprecise so that there could be fears about putting in place an additional jurisdiction based solely on a plaintiff's nationality, contrary to the most recent trends in contemporary international law. France considers it necessary, after having warned of the dangers of such a solution, to propose adjustments to the wording of this Article to deal with the problems involved, and that is what it wanted to do in the present document.

To this end, it proposes three amendments:

1) The first would be aimed at avoiding the precedent-related risks which might arise from a fifth jurisdiction mechanism in the draft Convention. To deal with these, the expression "or, **having regard to the specific characteristics of air transport**, in the territory of a State Party" should be included in Article 27.2.

2) The second amendment would consist in taking precautions with regard to the actual nature of the defendant's presence in the territory of the fifth jurisdiction and avoiding situations where small and medium-sized carriers providing services under agreements with another carrier but having no real presence in the territory of the fifth jurisdiction would be brought before it.

To achieve this end, Article 27.2 b) and Article 27.3 should be deleted. There would thus be a new subparagraph a) which would read "in which at the time of the accident the passenger has his or her principal and permanent residence and to which or from which the carrier operates air transport services and in which it conducts its business from premises which it leases or owns".

3) A third amendment would be aimed at clarifying the notion of "principal and permanent residence" and giving it an objective, specific and precise content. Such an objective and specific content would then make it possible to base the fifth jurisdiction on the plaintiff's actual residence and not on his or her nationality. A precise content is indispensable since courts cannot be left the task of determining the competence of jurisdictions (and would certainly do so in a divergent fashion).

(3 pages)

This precise content is also necessary to unify the law, which is an important objective of the Convention. The Convention must be free of ambiguity in this regard.

To this end, a new paragraph 3 would be included in Article 27 as follows:

"For the purposes of paragraph 2, the expression principal and permanent residence" shall mean:

- either the passenger's principal place of abode during the twelve months immediately preceding the accident;

- or the principal place of abode of the passenger's spouse or minor children or, if the passenger is a minor, of his or her parents, during the twelve months immediately preceding the accident;

- or the passenger's place of employment at the time of the accident;

- or, if the passenger is an official of a State Party serving in another State, whether a State Party or not, the headquarters of the authority to which that official reports."

In final form, the new text of Article 27, paragraphs 1 and 2 would read as follows:

"1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or, having regard to the specific characteristics of air transport, in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence or to which or from which the carrier operates air transport services and in which it conducts its business from premises which it leases or owns.

3. For the purposes of paragraph 2, the expression "principal and permanent residence" shall mean:

- either the passenger's main place of abode during the twelve months immediately preceding the accident;

- or the main place of abode of the passenger's spouse or minor children or, if the passenger is a minor, of his or her parents, during the twelve months immediately preceding the accident;

- or the passenger's place of employment at the time of the accident;

- or, if the passenger is an official of a State Party serving in another State, whether a State Party or not, the headquarters of the authority to which that official reports."

The rest of Article 27 would remain unchanged.

The French Delegation hopes that other delegations which are also desirous that the notions of residence and protecting small carriers should be better taken into account will be in a position to accept these proposals and show flexibility in an effort to make the Conference a success.

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DCW Doc No. 37
19/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

FINAL CLAUSES

ARTICLE 49 - ACCESSION OF REGIONAL ECONOMIC INTEGRATION ORGANISATIONS

(Presented by Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom)

1. PROPOSAL

1.1 The States presenting this document propose the following additions to the final clauses of the draft Convention. The objective is to allow Regional Economic Integration Organisations, such as the European Community (EC), which have competence in subject matters covered by the draft Convention to sign and accede to the Convention.

1.2 Some further consequential amendments to this Article may be required depending on the development of the text of the Convention.

Article 49

New paragraph 1 bis

"1bis This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorised to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "State Parties" in this Convention, otherwise than in Articles 1.2, 3.1(b), 5(b), 21B and 27 includes a Regional Economic Integration Organisation. For the purpose of Article 21C, the references to "a majority of the State Parties" and "one-third of the State Parties" shall not include a Regional Economic Integration Organisation."

Paragraph 2

Insert after "by States" the words "and by Regional Economic Integration Organisations."

Paragraph 3

At the end, add "save that such an instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

Paragraph 4

Insert after "For other States" the words "and for other Regional Economic Integration Organisations."

2. REASONS

2.1 In order to ensure that the Convention is durable and can keep pace with forthcoming developments, the future accession of Regional Economic Integration Organisations (REIO), if they assume competence in areas covered by the Convention, should be permitted. The accession will also demonstrate that such organisations are committed to a universal and uniform system.

2.2 The accession of a REIO, such as the EC, would not create operational implications for the new Convention. The above proposals ensure that air traffic between Member States would remain covered by the Convention. In addition, there would be no change in voting rights or procedures for entry into force of the Convention.

2.3 The EC is not a contracting party to the current Warsaw Convention, however it has been active in the area of air carrier liability since 1997 when it adopted a Regulation governing the liability of EC carriers in case of death or injury. This Regulation is binding on all fifteen of the EC's Member States.

2.4 In order to bring the REIOs and, in particular, the EC fully into a new unfragmented worldwide system which is and will remain satisfactory, the States presenting this paper believe that the EC should have the possibility to become a Contracting Party in its own right to the new Convention. Once it becomes a Contracting Party, the Convention will be binding upon it. The Court of Justice of the EC has given priority to international agreements concluded by the EC over its internal law and the law of its Member States.

2.5 The EC is a recognised subject of international law distinct from its Member States. It is already party to many multilateral international agreements including the United Nations Convention on the Law of the Sea, the Vienna Convention on the Protection of the Ozone Layer, the Treaty on the Energy Charter and the Convention on Customs Treatment of Pool Containers used in International Transport. The above proposal was drafted with regard to these precedents.

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DCW Doc No. 38
19/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

ARTICLE 27 – JURISDICTION

(Presented by Singapore)

In the interests of trying to find a compromise, the delegation of Singapore proposes the following as a new paragraph to Article 27:

> "5. The principle of jurisdiction applied in paragraph 2 of this Article shall be treated as one special to the area of carriage by air and shall not be used as a precedent in relation to other areas."

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DCW Doc No. 39
20/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

SUMMARY REPORT ON THE THIRD, FOURTH AND FIFTH MEETINGS OF THE "FRIENDS OF THE CHAIRMAN" GROUP

1. Third and Fourth Meetings, 19 May 1999*

1.1 The Group reviewed draft Article 27 and more particularly the matter of a fifth jurisdiction. In this context, the meeting examined various proposals in relation to the issue under which circumstances the fifth jurisdiction could be made available.

1.2 The meeting considered DCW Doc Nos. 33 and 36, which set out an alternative proposal regarding the fifth jurisdiction. In relation to this proposal, the Chairman described the commonalities with as well as the differences from the text contained in DCW Doc No. 3.

1.3 The Group then focussed its attention on the question as to whether to incorporate in the draft the concept of *forum non conveniens.* Preliminary views were expressed if and to what extent the above-mentioned concept could also be applied for the purpose of the proposed fifth jurisdiction.

1.4 Further discussions on Article 20 took place on the question of whether a three-tier system would be acceptable, provided that a suitable threshold for the second tier could be agreed upon. In the ensuing discussion the meeting expressed its preference for considering this matter not in isolation but rather in the context of an overall package solution, which would comprise a number of key provisions of the draft.

1.5 Pointing out that decisions on Articles 16, 20 and 27 and the other related Articles should be taken in the context of this package, the Chairman proposed, and the meeting agreed, that a package text would be prepared for consideration of the next meeting of the Group, taking into account the views which were expressed in the course of the discussions of this Group.

2. Fifth Meeting, 20 May 1999

2.1 The Chairman presented DCW-FCG No. 1, "Draft Consensus Package", which contained a preliminary proposal regarding Articles 16, 20, 21A, 22A and 27. He informed the Group that a proposed draft Article 22B, "Advance Payments", had been inadvertently omitted.

2.2 The Chairman gave a comprehensive explanation with respect to the development of this document and outlined the major elements of the package. A preliminary discussion regarding the document took place, and it was decided to defer further consideration of this matter to the next meeting of the Group.

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* The Group briefly met for its Third Meeting on 19 May 1999 before the lunch break and convened for the Forth Meeting in the afternoon of the same day.

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DCW Doc No. 40
20/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

PROPOSAL TO AMEND ARTICLE 27—JURISDICTION

(Presented by Australia)

In the course of the meeting of the Friends of the Chairman on Wednesday, 19 May 1999, Australia proposed that consideration be given to the amendment of Article 27 of the Draft Convention along the lines set out below. This proposal was made in order to meet the concerns expressed by some about the potential for unfairness implicit in the availability of a fifth jurisdiction.

The proposed amendment captures and codifies the principle of fairness embraced by the concept of *forum non conveniens*, without adopting any specific variant of that principle or any particular doctrinal basis for its application.

The object of the amendment is to ensure that, where there may be compelling reasons why a claim should be heard in an available jurisdiction, *other than the jurisdiction in which a claimant or claimants have initiated an action*, the court will be obliged to consider those arguments in its assessment of preliminary jurisdictional questions. As proposed, this amendment would apply to the exercise of *any* of the five (5) optional bases for jurisdiction provided for in Article 27, not exclusively the fifth jurisdiction.

Australia would also like to make it clear that this proposal was offered without prejudice to the further clarification and possible revision of sub-paragraphs (a), (b) and (c) of paragraph 2.

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, and subject to the provisions of paragraph 3, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or in the territory of a State Party:

(a) in which at the time of the accident the passenger has his or her principal and permanent residence; and

(b) to or from which the carrier actually or contractually operates services for the carriage by air; and

(c) in which that carrier conducts its business of carriage by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. Where the defendant is able to satisfy the Court that:

(a) in all the circumstances, it is manifestly unfair to permit the matter to be heard and decided in that jurisdiction; and

(b) there exists another jurisdiction in which the matter may properly, and with a view to the interests of all the parties, more fairly and conveniently be heard and decided, the Court may dismiss the matter.

~~3~~ 4. In this Article, "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision or marketing of their joint services for carriage by air.

~~4~~ 5. Questions of procedure shall be governed by the law of the Court seised of the case.

- END -

DCW Doc No. 41
21/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

Article 27 – Fifth Jurisdiction

(Presented by France)

Taking into account the comments that have been made, the French Delegation would like to modify the proposals in DCW-FCG No. 1, presented by the President of the Conference, on Article 27, paragraph 3, which would be replaced by the following provision:

> "For the purposes of paragraph 2, the expression "principal and permanent residence" shall mean the passenger's main place of abode during the twelve months preceding the accident. The criterion of the nationality of the passenger cannot be used to determine it."

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DCW Doc No. 42
21/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

ADVANCE PAYMENTS

Comments on Article 22 A

(Presented by Switzerland)

The Delegation of Switzerland would like to draw your attention to the experiences obtained with advance payments after the aircraft accident with SR Flight 111 which occurred last year.

In September 1998 SR Flight 111 on its way from New York to Geneva crashed into the sea near Halifax. On board the MD-11 were 215 passengers and 14 crew members. None of these 229 people survived. The reason for the crash is still unknown, but tremendous efforts continue to be undertaken by the Canadian Aircraft Accident Investigation Board to find the cause of this accident.

With regard to the liability of the carrier, Swissair started to pay advance payments immediately after the crash to the families of the victims who asked for financial support. These payments were made on a voluntary basis, as there is neither a legal obligation under Swiss law to make such payments, nor does there exist today any international Convention obliging an air carrier to do so. The amount of these advance payments was fixed to 15 000 SDR for every passenger.

This offer for advance payments clearly met a need for immediate financial support, as a total of 163 families of victims (or 75%) have requested such advance payments.

At a later stage, the families of victims were offered 100 000 SDR as advance payments on final settlement. Until now, 65 families out of the 215 victims have accepted this sum as an interim solution. Further discussions and in some cases litigation will be needed to find a definite solution. Today, eight months after the crash, only one single case could be settled definitely, and in a second case the descendants of the victim and the air carrier are close to reaching a final agreement. The fact that the cause of the accident has not yet been determined makes an early final settlement more complicated.

Of course the above-mentioned accident is one case among others. But the fact that 75 % of the families of victims have asked for advance payments, seems to be a clear signal that there exists a need for advance payments. This Conference is therefore kindly invited to consider inclusion of mandatory advance payments in the Convention. Finally, it is in the interest of both the victims or their families and the carrier to provide for immediate financial support in case of death or injury to passengers. Advance payments are just and fair and should therefore become part of a new aviation liability system.

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DCW DOC No.43
21/5/99

INTERNATIONAL CONFRENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

Proposal for the deletion of paragraph 2 of Article 41

(Presented by the Delegate of Lebanon)

Paragraph 2 of Article 41 allows the contracting carrier and the actual carrier to agree on clauses relieving them of liability for loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

This paragraph, reproduced from Article IX, paragraph 2, of the 1961 Guadalajara Protocol, in respect of the actual carrier, was originally applicable to the contracting carrier, pursuant to Article 23 of the Warsaw Convention as amended by the Hague Protocol, 1955. However, this paragraph was no longer relevant after the amendment introduced by the Montreal Protocol No. 4 of 1975 providing for several instances for relieving the carrier of liability, including the case of loss or damage resulting from the inherent defect, quality or vice of the cargo (Article 18, paragraph 3 a)). This last provision has been adopted as Article 17, paragraph 2 a), of the present Draft Convention.

Since, in accordance with Article 34 of the Draft Convention, the actual carrier - as well as the contracting carrier – is subject to the provisions of this Draft Convention in respect of the carriage it performs, it would benefit, *de jure*, from relief of liability pursuant to Article 17, paragraph 2 a), if the damage to cargo resulted from inherent defect, quality or vice of that cargo, without the need for the inclusion of specific provisions or clauses in the contract of carriage.

Thus, paragraph 2 of Article 41 becomes irrelevant and inconsistent with the amendments introduced by the Montreal Protocol No. 4 and adopted by the present Draft Convention.

We, therefore, propose the deletion of paragraph 2 of Article 41.

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DCW Doc. No.44
21/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

COMMENTS ON AND AMENDMENTS TO ARTICLES 16, 20, 21D, 27 AND 29

(Presented by Namibia)

1. Namibia wishes to place on record its appreciation for the efforts made by the "Friends of the Chairman Group" to arrive at a reasonable compromise solution in the context of an overall package as contained in DCW-FCG No.1

2. Ad Article 16:

With regard to Article 16, we are of the opinion that the words " in the course of any of the operations of embarking or disembarking or" in the third line of paragraph 3 of DCW-FCG No.1 should be deleted. This is because the concepts of embarking and disembarking clearly do not apply in the context of checked baggage. Moreover, whatever is intended to be covered by those concepts is fully covered by the words "during any period within which the baggage was in the charge of the carrier".

Further, it is proposed that in order to make it clear that the second-last sentence of paragraph 3 applies equally to unchecked baggage, it should become the last sentence of paragraph 3.

3. Ad Article 20:

Namibia continues to be firmly of the opinion that the provisions of paragraphs 1 and 3 of Article 20 in the "Draft Consensus Package" as presented are clearly irreconcilable with each other. Whilst paragraph 1 in emphatic terms prohibits a carrier from "excluding" or " limiting" its liability, paragraph 3 thereof explicitly provides that the carrier may, indeed, exclude or limit the very same liability by the application of Article 19. This position is jurisprudentially and doctrinally not sound or defensible. We submit that either we agree to have strict liability for the first tier or we expressly abolish strict liability and instead provide for presumptive liability in respect of the first tier.

(3 pages)

We are however of the opinion that in the interests of clarity, certainty, avoidance of unnecessary litigation and the prompt payment of advance payments to victims of air accidents, the first tier should provide for strict liability up to 100 000 SDR without the defense of contributory negligence being available except and to the extent only that the damage was caused by the willful act or omission of the claimant or the person from whom he/she derives his/her rights.

We therefore propose that Article 20 be re-formulated as follows:

1. The carrier should be strictly liable for proven damage arising under paragraph 1 of Article 16 up to a limit of 100 000 SDR.

2. The liability of the carrier exceeding the amount of 100 000 SDR should be subject to proof by the claimant that the damage sustained was due to the fault or neglect of the carrier or its servants or agents acting within their scope of employment.

3. The provisions of paragraph 1 of Article 19 shall not apply to the damage referred to in paragraph 1 of this Article unless the aforesaid damage was caused by the willful act or omission of the claimant or the person from whom he/she derives his/her rights.

4. Ad Article 21D:

The Namibian delegation is of the opinion that this article should be deleted in toto for the following reasons:

a) It would lead to further fragmentation of the Warsaw System and thus destroy the principle of uniformity which is the object of the limits set out in the Convention;

b) The Convention contains adequate review provisions which would obviate the need for Article 21D in its present form.

5. Ad Article 27:

The proposal contained in DCW-FCG No.1 in relation to this article is acceptable to the Namibian delegation and we support it fully.

Our delegation is, however, also prepared to accept, by way of an alternative, the Australian proposal as set out in DCW-DOC 40 subject to the following :

a) the deletion in Sub-Article 2(b) of the words "or contractually";

b) the deletion in Sub-Article 2 (c) of the words "or by another carrier with which it has a commercial agreement";

c) the deletion of Sub-Article 4 of that Article.

6. Ad Article 29

Since many jurisdictions confer a substantive discretion on a judge to condone non-compliance with statutory time limits in the interest of equity , we wish to propose that a new paragraph 2 along the following lines be inserted:

"2. Notwithstanding the provisions of paragraph 1 hereof a Court seized of a case may, on good cause shown, condone non-compliance with the time-limit referred to therein."

– END –

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DCW Doc No. 45
25/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 49, PARAGRAPH 3: ENTRY INTO FORCE

(Presented by the United States of America)

1. **Proposal**

1.1 Revise paragraph 3 of Article 49 of the draft Final Clauses in the Attachment to DCW Doc. No. 5, presented by the Secretariat, to increase the threshold for entry into force of the new Convention to 30 States representing at least 60% of the total international scheduled air traffic.

2. **Reasons**

2.1 Paragraph 3 of Article 49 of the draft Final Clauses in the Attachment to DCW Doc. No. 5, presented by the Secretariat, provides that the new Convention shall enter into force following deposit of the fifteenth instrument of ratification, acceptance, approval, or accession.

2.2 The low threshold proposed for entry into force would promote a patchwork, rather than uniformity, in the rules for international carriage by air. Currently, over 130 States are party to some form of the Warsaw Convention and over 120 airlines, representing over 60 States and over 90% of international air transportation, have signed the 1996 intercarrier agreements. Those agreements represent a high level of uniformity to international rules of carriage by air. A new Convention that could be brought into force by 15 States would detract from the present level of uniformity.

2.3 A low threshold would defeat key objectives of this conference. Key objectives of this conference are to modernize the Warsaw Convention and to promote uniformity in international rules. The proposed low threshold might serve to expeditiously accomplish modernization for a few States, but at the cost of reducing uniformity for all other States. The new Convention need not compromise one key objective to accomplish the other. A high threshold for entry into force will promote broad based, rather than selective, modernization.

2.4 Uniformity means certainty and simplicity for passengers, airlines, and insurers. In a world where the rules of airline liability for an airline vary for every destination and keep changing over time, it is hardly possible for airlines to give consumers comprehensible notice of the applicable liability regime. Therefore, to promote certainty, it may be better to modernize by keeping the current system, which is widely accepted, until a meaningful percentage of States, representing a substantial percentage of international air transportation, are prepared to accept the new system.

2.5 For these reasons, it is proposed that the new Convention enter into force once it has been ratified by 30 States representing at least 60% of the total international scheduled air traffic. A proposal for revising paragraph 3 of Article 49 is attached.

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DCW Doc No. 45
ATTACHMENT

ATTACHMENT

Article 49 - Ratification

Revise paragraph 3 of Article 49 to read as follows:

> "3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary on the condition, however, that the total international scheduled air traffic, expressed in passenger-kilometers, according to the statistics for the year 1998 published by the International Civil Aviation Organization, of the airlines of the States which have ratified this Convention, represents at least 60% of the total international scheduled air traffic of the airlines of the member States of the International Civil Aviation Organization in that year. If, at the time of deposit of the thirtieth instrument of ratification, this condition has not been fulfilled, the Convention shall not enter into force until the sixtieth day after this condition has been satisfied."

– END –

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DCW Doc No.46
24/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

REPORT OF THE CREDENTIALS COMMITTEE

(Presented by the Chairman of the Credentials Committee)

1. At its first meeting held on 10 May 1999, the Conference established a Credentials Committee and the Delegations of Côte d'Ivoire, Finland, Jordan, Pakistan and Panama were invited to nominate members for this Committee.

2. On 12 May 1999 the first meeting of the Credentials Committee was held; the Committee was composed as follows:

Mr. Jean Kouassi Abonouan	(Côte d'Ivoire)
Mr. Yrjö Mäkelä	(Finland)
Mr. Awni Al-Momani	(Jordan)
Mr. Shahid Nazir Ahmad	(Pakistan)
Mr. Ernesto Espinoza Alvarez	(Panama)

On a proposal made by the Delegates of Côte d'Ivoire and Finland, the Delegate of Pakistan, Mr. Shahid Nazir Ahmad, was unanimously elected Chairman of the Committee.

3. At the Fifth Meeting of the Plenary of the Conference, the Chairman of the Credentials Committee presented a preliminary report and informed the Conference that as of 12 May 1999, 103 Contracting States, one non-Contracting State and 11 international organizations had registered for the Conference. Credentials in due and proper form had been submitted by 80 Contracting States, one non-Contracting State and 11 international organizations. Full powers had been submitted by 40 Contracting States and one non-Contracting State.

4. The Committee recommended to the Conference, in conformity with Rule 3 of the Rules of Procedure, that all the delegations registered be permitted to participate in the Conference pending receipt of their credentials in due form; the Conference accepted this recommendation.

5. On 24 May 1999 the Committee held its second meeting and examined the credentials which had been received to date. The credentials of the following delegations of 111 Contracting States were found to be in due and proper form:

Afghanistan	Argentina
Algeria	Australia

Azerbaijan
Bahamas
Bahrain
Bangladesh
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Burkina Faso
Cambodia
Cameroon
Canada
Cape Verde
Chile
China
Colombia
Costa Rica
Côte d'Ivoire
Cuba
Cyprus
Czech Republic
Denmark
Dominican Republic
Egypt
Ethiopia
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Guinea
Haiti
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kuwait
Lebanon
Lesotho
Lithuania
Luxembourg
Madagascar
Malawi
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Mongolia
Morocco
Mozambique
Namibia
Netherlands
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Senegal
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Swaziland
Sweden
Switzerland
Thailand
Togo
Trinidad and Tobago
Tunisia

Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Viet Nam
Yemen
Zambia
Zimbabwe

The credentials of the following non-Contracting State were found to be in due and proper form:

The Holy See

Furthermore, the following 11 Observer delegations have registered and presented proper evidence of accreditation to the Conference:

African Civil Aviation Commission (AFCAC)
Arab Civil Aviation Commission (ACAC)
European Civil Aviation Conference (ECAC)
European Community (EC)
International Air Transport Association (IATA)
International Chamber of Commerce (ICC)
International Law Association (ILA)
International Union of Aviation Insurers (IUAI)
Interstate Aviation Committee (IAC)
Latin American Association of Air and Space Law (ALADA)
Latin American Civil Aviation Commission (LACAC)

6. The Credentials Committee took note that as of 24 May 1999, delegations of 54 Contracting States had deposited their full powers to sign the Convention:

Algeria
Bahamas
Belgium
Belize
Benin
Bolivia
Burkina Faso
Cambodia
Chile
China
Côte d'Ivoire
Cuba
Cyprus
Czech Republic
Denmark
Dominican Republic
Finland
France
Germany
Ghana
Greece
Iceland
Italy
Jamaica
Kenya
Kuwait
Lebanon
Lithuania
Luxembourg
Madagascar
Malta
Mauritius

Mozambique	Slovakia
Namibia	Slovenia
Niger	South Africa
Nigeria	Spain
Pakistan	Sweden
Panama	Switzerland
Poland	Turkey
Portugal	United Kingdom
Romania	United States
Saudi Arabia	Uruguay
Senegal	Viet Nam

The following non-Contracting State had deposited its full powers to sign the Convention:

The Holy See

These full powers were found to be in good and proper order.

– END –

DCW Doc No. 46
24/5/99
ADDENDUM
28/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

REPORT OF THE CREDENTIALS COMMITTEE

(Presented by the Chairman of the Credentials Committee)

Subsequent to the meeting of the Credentials Committee held on 24 May 1999 and reported to the Plenary in DCW Doc No. 46, the credentials of delegations of the following 4 Contracting States have been found to be in due and proper form:

Austria
Belarus
Central African Republic
Sudan

This brings to 115 the number of credentials of delegations of Contracting States found to be in due and proper form.

Also, delegations of a further 13 Contracting States deposited their full powers to sign the Convention, as follows:

Bahrain
Bangladesh
Central African Republic
Gabon
Jordan
Mexico
Monaco
Morocco
Peru
Sudan
Swaziland
Togo
Zambia

This brings to 67 the total number of delegations of Contracting States who have deposited their full powers.

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DCW Doc No. 47
24/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

REPORT OF THE DRAFTING COMMITTEE ON ITS FIRST TO FIFTH MEETINGS

ARTICLES 1 TO 15, 17 TO 19, 21A, 21 B TO 22, 23 TO 26, 28, 37 and 49 TO 52

(Presented by the Chairman of the Drafting Committee)

The Drafting Committee has held five meetings under the Chairmanship of Mr. A. Jones (United Kingdom) on 13, 18, 20, 21 and 22 May 1999.

As requested by the Commission of the Whole, the Drafting Committee examined the Draft Final Clauses contained in DCW Doc No. 5. In relation thereto, it also considered DCW Doc Nos. 34 and 37.

As a result of its work, the Drafting Committee made a number of modifications which are reflected in the text set out in this Report. Furthermore, it made a number of decisions with respect to consequential linguistic and editorial points, where these remain outstanding, they are indicated in the text set out in this Report.

In relation to the text set out below, the following two statements are to be recorded:

1. With respect to the wording of draft Article 3, paragraph 4, it has been the understanding of the Drafting Committee that notice shall be given by the carrier in a timely fashion, sufficiently prior to the departure, in order to allow the passenger to take appropriate action, namely to decide whether or not to take out insurance. All language versions should convey this understanding adequately.

2. As far as the expression "is limited to" in draft Article 21A, paragraphs 1 to 3, is concerned, it has been the understanding of the Committee that the amounts appearing thereafter do not constitute amounts which can be automatically recovered by claimants in all instances, but rather maximum amounts, which could be recovered in the event the claimant has discharged the burden of proof with respect to the extent of the damage he or she has sustained. Although it was observed that this understanding could be more accurately reflected by using an expression such as "may not exceed" it was decided to retain the present wording, and to confirm this understanding, given that there already exists a body of judicial precedents on this matter in relation to the Warsaw Convention where the expression "is limited to" is also used.

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DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

Preamble

(To be inserted)

Chapter I

General Provisions

Article 1 - Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

Secretariat Note:

The following abbreviations are used:

EN	-	English Language
FR	-	French Language
SP	-	Spanish Language
RU	-	Russian Language
AR	-	Arabic Language
CH	-	Chinese Language

Underline
highlights text to be reviewed from translation/linguistic viewpoint

Redline
highlights new text added

~~Strikeout~~
highlights text to be deleted

Articles without margin note are those which were not referred to the Drafting Committee and are reflected for the sake of completeness only.

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

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 - Carriage Performed by State - Postal Items

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.

Left unchanged, para. 1 to be further reviewed in connection with Article 48

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 - Passengers and Baggage

1. In respect of carriage of passengers an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written 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, this Convention may be applicable and that the Convention governs and in some cases limits the liability of carriers for death or injury, destruction or loss of, or damage to baggage, and delay.

RU and CH texts to be reviewed

[4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.]

Alternative text for para. 4 proposed. As modified by Drafting Committee.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Left unchanged

Article 4 - Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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~~ cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Modified to achieve consistency with Articles 5, 7, 9 - 11

Article 5 - Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 [nature] and weight of the consignment.

To be reviewed by Commission of the Whole

Article 6 - Description of Air Waybill

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 by the carrier. The third part shall be signed by the carrier who shall hand it 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, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7 - Documentation of for Multiple Packages

Revision of EN text only for linguistic reasons

When there is more than one package:

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 8 - Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 7 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.

Left unchanged

Article 9 - Responsibility for Particulars of Documentation

Left unchanged

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 10 - Evidentiary Value of Documentation

1. The air waybill or the cargo receipt 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 cargo receipt 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 [nature][1], 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 or the cargo receipt[2] to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

[1] To be reviewed by Commission of the Whole

[2] "or the cargo receipt" added for reasons of consistency with Articles 4 and 10 para. 1

Article 11 - Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

Left unchanged

2. If it is impossible to carry out the instructions of the consignor the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 12. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 12 - Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 11, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, 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.

Left unchanged

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 [or consignor][1] is entitled to enforce against the carrier the rights which flow from the contract of carriage.

[1] To be reviewed by the Commission of the Whole

Article 13 - Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 11 and 12, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 14 - Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 11, 12 and 13 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 11, 12 and 13 can only be varied by express provision in the air waybill or the cargo receipt.

Article 15 - Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities 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, its 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 and Extent of Compensation for Damage

Article 16 - Death and Injury of Passengers - Damage to Baggage

(to be inserted)

Under review in the FCG/Commission of the Whole

Article 17 - Damage to Cargo

1. 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 event which caused the damage so sustained took place during the carriage by air.

FR to use "événement"

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway[1] performed outside an airport.[2] If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event[3] which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

[1] FR to be reviewed
[2] FR to use "aéroport"
[3] FR to use "fait"

Article 18 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage, or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Left unchanged

Article 19 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.

Left unchanged

Under review in FCG/Commission of the Whole

Article 20 - Compensation in Case of Death or Injury of Passengers

(to be inserted)

Under review in FCG/Commission of the Whole

Article 21 A - Limits of Liability in Relation to Delay, Baggage and Cargo

(to be inserted)

Text added

Under review in FCG/Commission of the Whole

Article 21 B - Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 the judgment. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect 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 State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 20 is fixed at a sum of [1 500 000][3] monetary units per passenger in judicial proceedings in their territories: [62 500][1] monetary units per passenger with respect to paragraph 1 of Article 21 A; [15 000][3] monetary units per passenger with respect to paragraph 2 of Article 21 A; and [250][3] monetary units per kilogramme with respect to paragraph 3 of Article 21 A. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 20, 21 A, 21 B and 21 C as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 21 C - Review of Limits

1. Without prejudice to the provisions of Article 21 D of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Article 20 and Articles 21 A and B shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 21 B.

[1] This figure is taken from Additional Protocol No. 3 and is used for illustrative purposes only.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 21 D - Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 22 - Invalidity of Contractual Provisions

Left unchanged

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

Article 22 A - Freedom to Contract

Under review in FCG/Commission of the Whole

(to be inserted)

Article 22 B - Advance Payments

Under review in FCG/Commission of the Whole

(to be inserted)

Article 23 - Basis of Claims

In the carriage of passengers, baggage, and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

SP to use "punitiva"

Article 24 - Servants, Agents - Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if ~~he or she~~ they proves that ~~he or she~~ they acted within the scope of ~~his or her~~ their employment, shall be entitled to avail ~~himself or herself~~ themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

EN amended. Other languages to check possible alignment.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 25 - Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in Article 3, paragraph 2, and Article 4, paragraph 2.

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

Comma added

3. Every complaint must be made in writing and given or despatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 26 - Death of Person Liable

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 or her estate.

Panama and Spain will provide amended text in SP

Article 27 - Jurisdiction
(to be inserted)

Under review in FCG/Commission of the Whole

Article 28 - Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 27.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 29 - Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of 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 that period shall be determined by the law of the Court seised of the case.

Article 30 - Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier who accepts passengers, baggage or cargo is subject to the rules set out in this Convention, and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

Left unchanged

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her, 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 31 - Right of Recourse against Third Parties

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

Combined Carriage

Article 32 - Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 17, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

Left unchanged

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

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 33 - Contracting Carrier - Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 34 - Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article 33, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which it performs.

Articles 35, 36 and 38 to 48

(have not yet been reviewed by the Drafting Committee to which they have been referred by the Eleventh Meeting of the Commission of the Whole and will be reviewed at the next meeting of the Drafting Committee.)

Article 37 - Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Chapter VII

Final Clauses

Text in square brackets to be reviewed by Commission of the Whole

Article 49 - Signature, Ratification and Entry into Force

This Article incorporates text from DCW Doc No. 5 and attachment thereto, as well as from DCW Doc. No. 37, with modifications

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph ~~3~~ 6 of this Article. ~~Any State which does not sign this Convention may accept, approve of or accede to it at any time.~~

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorised to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in Articles 1.2, 3.1(b), 5(b), 21B and 27, includes a Regional Economic Integration Organisation. For the purpose of Article 21C, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not include a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. ~~This Convention shall be subject to ratification, acceptance, approval or accession by States.~~ Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time. ~~Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated the Depositary.~~

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. ~~This Convention shall enter into force on the sixtieth day following the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession with the Depositary.~~

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the [fifteenth] [or such greater number of States Parties as is necessary to ensure that the States Parties represent at least [40 %] of the total international [scheduled] air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998], instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

To be reviewed by the Commission of the Whole

7. For other States and for other Regional Economic Integration Organisations, this Convention shall ~~enter into force~~ take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession. [The Depositary shall accept the deposit of such an instrument from any State referred to in paragraph 4 of Article 51 only if ~~he~~ it is satisfied that that State has given the requisite notices of denunciation referred to in that paragraph, or is giving such notices at the time of deposit.]

Consequential on Art. 51 para.4 to be reviewed by Commission of the Whole

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 50;

[(f) the date of deposit of the [fortieth] [fiftieth] [or such greater number of States Parties as is necessary to insure that the States Parties represent at least [40 %] of the total international [scheduled] air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998] instrument of ratification, acceptance, approval or accession;

To be reviewed by Commission of the Whole

[(g) the date ~~he~~ it gives the notices of denunciation referred to in paragraph 3 of Article 51.]

Consequential on Art. 51 para 3 to be reviewed by the Commission of the Whole

Article 50 - Denunciation

Text from DCW Doc No. 5 unchanged

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 51 - Relationship with other Warsaw Convention Instruments

Text from DCW Doc No. 5 with modifications in para. 2

1. This Convention shall prevail over any rules which apply to international carriage by air:

(1) between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Signed at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier* Signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocols Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol done at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

(2) within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

[2. Not less than sixty days after the deposit of the [fortieth] [fiftieth] instrument of ratification, acceptance, approval or accession, [or such greater number of States Parties as is necessary to insure that the States Parties represent at least [40 %] of the total international [scheduled] air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998], each of the States Parties shall give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a party to one or more of those instruments.

To be reviewed by Commission of the Whole

3. The Depositary is hereby deemed to be authorized to act on behalf of the States Parties referred to in paragraph 2 of this Article to serve the notices of denunciation there referred to.

To be reviewed by Commission of the Whole

4. Any State wishing to become a Party to this Convention after the date of service of the notices of denunciation referred to in paragraph 2 or 3 of this Article shall, at the time of depositing its instrument of ratification, acceptance or approval of, or accession to, this Convention, give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a party to one or more of those instruments, or shall demonstrate to the Depositary that it has done so.]

To be reviewed by Commission of the Whole

Article 52 -States with more than one System of Law

Text from DCW Doc No. 34 with modifications

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration: ~~which has two or more systems of law applicable in different territorial units in relation to matters dealt with in this Convention-~~

(a) references in Article 21B to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) ~~references in Article 45 to "States Parties" and "State" shall be construed as referring to the relevant territorial unit of that State.~~" the reference in Article 22B to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

[SIGNATURES]

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DCW Doc No. 48
25/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

COMMENTS ON ARTICLE 51, PARAGRAPHS 2, 3 AND 4

AUTOMATIC DENUNCIATION

(Presented by the United States of America)

1. PROPOSAL

1.1 It is proposed that paragraphs 2, 3, and 4 of Article 51 in the Attachment to DCW Doc. No. 5 be deleted and Article 49 be conformed by deleting subparagraphs 5(f) and (g).

2. Reasons

2.1 Paragraph 2 of Article 51 of the Draft Final Clauses in the Attachment to DCW Doc No. 5, presented by the Secretariat, provides that all States Parties to the new Convention shall denounce the Warsaw Convention and all amendments thereto once fifty States have become Party to the new Convention. Paragraph 3 of that Article provides that the Depositary is deemed authorized to effect the required denunciations on behalf of those States Parties. Paragraph 4 provides that States subsequently wishing to become Parties to the new Convention must denounce the prior Warsaw agreements at the time of becoming Party to the new Convention.

2.2 Automatic denunciation would frustrate the vital objective of unifying international rules for airline liability. Currently, over 130 States are party to some form of the Warsaw Convention and over 120 airlines, representing over 60 States and over 90% of international air transportation, have signed the 1996 intercarrier agreements. Automatic denunciation would erase this high level of uniformity once any 50 States, without regard to the percentage of passengers or number of airlines represented, become Party to the new Convention.

2.3 Automatic denunciation may discourage States from ratifying the new Convention. Despite their support of the new Convention's balance of rights between airlines and passengers, States may fear the uncertainty of a world without any international standards. Once the automatic denunciation provision takes effect, the airlines of Parties to the new Convention would be subject to the differing laws of States that were not Parties to the new Convention.

2.4 The proposed provision is unnecessary. Automatic denunciation is a powerful weapon against States reluctant to ratify the new Convention, because those States will be forced out of treaty relations. Perhaps all delegations seek a new Convention with universal adherence, but such drastic means are not required. Every State has the right to denounce the Warsaw Convention and its amendments at any time. States should carefully consider exercising this right, either individually or collectively, based on circumstances at the relevant time.

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DCW Doc No.49
26/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

FINAL CLAUSES

(Presented by Australia and New Zealand)

For the reasons explained below, Australia and New Zealand believe that the number of States required to give effect to the actions contemplated by Article 49 (Ratification) and Article 51 (Relationship with other Warsaw Convention Instruments) of the Draft Convention, as proposed in DCW Doc No. 5, is too low in each case.

We also believe that, in addition to raising the threshold number of States required to act for the purposes of Articles 49 and 51, there should be a corresponding requirement that a specified minimum proportion of the world's scheduled international air traffic be attributable to the total number of States Parties in each instance.

The move from one convention system to another will necessarily involve potentially problematic transitional implications. Unless and until all, or at least a substantial number of, States have formally committed themselves to the new Convention—and in so doing, denounce the instruments to which they were previously bound—an interregnum characterised by uncertain, inconsistent and incompatible obligations will prevail. It is in the interest of every State, and the greater good of international civil aviation, therefore, that the duration of this transitional period be as short as possible, and that the new Convention be brought into force as soon as practicable.

At the same time, it is equally important to ensure that there be a rational relationship between the number of States Parties required to bring the new Convention into force, on the one hand, and the proportion of scheduled international air traffic attributable to those States, on the other. In the absence of such a balance, we run the risk of bringing the Convention into force without capturing the major portion of scheduled international air traffic, or alternatively, of establishing a system of obligations under the Convention that are applicable to most of the world's scheduled international air traffic operations, but which, in fact, are binding on only a very small number of States Parties.

In order to obviate the difficulties and achieve the balance discussed above, we propose that the ratification provisions specified in draft Article 49, and the denunciation provisions specified in draft Article 51 (as both are set out in DCW Doc. No. 5) be amended as follows.

Article 49

Paragraph 3 currently provides that the Convention will enter into force on the sixtieth (60th) day after deposit of the fifteenth (15th) instrument of ratification, acceptance, approval or accession. We propose that this paragraph be amended to provide that the Convention will enter into force after deposit of the *thirtieth (30th)* instrument or, as the case may be, after appropriate instruments have been deposited by *such*

greater number of States as would be necessary to ensure that the States Parties represent at least 51% of the total international scheduled air traffic of the carriers of ICAO Member States.

Sub-paragraph 5(f) is amended to reflect the change in the number of ratifying States required (from 50 to 30). Sub-paragraph 5(c), which currently requires the Depositary to notify signatories when the Convention enters into force—under our proposal, only after both of the requirements specified above have been satisfied—does not need to be amended.

A new sub-paragraph 5(g) requires the Depositary to notify signatories when the eighty-fifth (85th) instrument has been deposited. As discussed below, under our proposed amendment to Article 51, eighty-five (85) States must ratify, accept, approve or accede to the Convention before a newly proposed requirement to denounce the existing Warsaw System would come into effect.

Further to the requirements associated with denunciation of the Warsaw System, a new sub-paragraph 5(h) requires the Depositary to notify signatories when the State Parties to the new Convention comprise States to which not less than 75% of the total scheduled international air traffic of the air carriers of ICAO Member States can be attributed.

Finally, an amended sub-paragraph 5(i) requires the Depositary to notify signatories when any denunciation of the Warsaw System agreements is received.

Article 51

Paragraph 2 currently provides that each of the States Parties to the new Convention must give notice of its denunciation of the existing Warsaw System instruments to which it is party not less than sixty (60) days after the deposit of the fiftieth (50th) instrument of ratification, acceptance, approval of, or accession to, the new Convention.

We propose that State Parties not be required to give this notice until the *eighty-fifth (85th) instrument* has been deposited, or, as the case may be, until instruments have been deposited *by such greater number of States as would be necessary to ensure that the States Parties represent at least 75% of the total international scheduled air traffic of the carriers of ICAO Member States.*

The figure of 85 States represents approximately two-thirds of the total number of States currently Parties to one or more instruments comprising the Warsaw System.

We believe it is appropriate to require that States Parties to the new Convention denounce the instruments of the existing Warsaw System to which they are to be party in accordance with the terms of Article 51, paragraph 2, as discussed immediately above. However, we do *not* believe that either the authority or the prerogative to take this action is properly conferred on the Depositary, but that it should remain within the sovereign province of each State Party. To this end, Paragraph 3 of Article 51, as it currently appears in DCW Doc No. 5, has been deleted and paragraph 4 renumbered accordingly.

A reference text indicating the modifications to Articles 49 and 51 proposed herein is attached to this Document **(Attachment A)**. We have also attached a table reflecting the proportion of scheduled international air traffic attributable to the top-thirty ICAO Member States **(Attachment B)**.

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ATTACHMENT A

Chapter VII

Final Clauses

Article 49 - Ratification

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accept, approve of or accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated the Depositary.

3. This Convention shall enter into force on the sixtieth day following the date of deposit with the Depositary of the ~~fifteenth~~ thirtieth instrument of ratification, acceptance, approval or accession, ~~with the Depositary~~ or such greater number of States Parties as is necessary to ensure that the States Parties represent at least 51% of the total international scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession. The Depositary shall accept the deposit of such an instrument from any State referred to in paragraph ~~4~~ 3 of Article 51 only if ~~he~~ it is satisfied that that State has given the requisite notices of denunciation referred to in that paragraph, or is giving such notices at the time of deposit.

5. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 50;

(f) the date of deposit of the ~~fiftieth~~ thirtieth instrument of ratification, acceptance, approval or accession;

(g) the date of deposit of the 85th instrument of ratification, acceptance, approval or accession;

(h) the date when the State Parties to this Convention comprise not less than 75% of the total international scheduled air traffic of the airlines of the Members States of the International Civil Aviation Organization; and

(g i) ~~the date he gives the notices of~~ any denunciation ~~referred to in~~ under paragraph ~~3~~ 2 of Article 51.

Article 51 - Relationship with other Warsaw Convention Instruments

1. This Convention shall prevail over any rules which apply to international carriage by air:

(1) between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Signed at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier*-Signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the Protocol to Amend the *Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocols Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol done at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

(2) within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

2. Not less than sixty days after the deposit of the ~~fiftieth~~ eighty-fifth (85th) instrument of ratification, acceptance, approval or accession, or such greater number of States Parties as is necessary to ensure that the States Parties represent at least 75% of the total international scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998, each of the States Parties shall give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the

Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a party to one or more of those instruments.

~~3. The Depositary is hereby deemed to be authorized to act on behalf of the States Parties referred to in paragraph 2 of this Article to serve the notices of denunciation there referred to.~~

~~4~~3. Any State wishing to become a Party to this Convention after the date of service of the notices of denunciation referred to in paragraph 2 ~~or 3~~ of this Article shall, at the time of depositing its instrument of ratification, acceptance or approval of, or accession to, this Convention, give the requisite notice to denounce the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols insofar as it is a party to one or more of those instruments, or shall demonstrate to the Depositary that it has done so.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

[SIGNATURES]

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ATTACHMENT B

Top 30 countries or group of countries in 1997 in terms of traffic carried (passenger-kilometres) on their airlines' international scheduled services.

	Country	Passenger-kilometres estimated 1997 (millions)	Percentage of world travel
1	United States	267 753	18.14
2	United Kingdom*	151 052	10.22
3	Japan	84 098	5.69
4	Germany	82 258	5.57
5	Netherlands	70 465	4.77
6	Singapore	55 459	3.75
7	France	53 781	3.64
8	Republic of Korea	51 954	3.52
9	Australia	48 554	3.29
10	Canada	40 928	2.77
11	Italy	29 285	1.98
12	Thailand	27 747	1.88
13	Switzerland	26 160	1.77
14	Brazil	25 537	1.73
15	Malaysia	24 029	1.63
16	Spain	23 235	1.57
17	Gulf States	21 576	1.46
18	New Zealand	19 970	1.35
19	Russian Federation	18 135	1.23
20	Scandinavia	16 609	1.12
21	Indonesia	16 182	1.10
22	China	15 781	1.07
	Hong Kong*	19 341	1.31 (6 months)
23	Phillippines	14 431	0.98
24	Saudi Arabia	13 061	0.88
25	India	12 877	0.87
26	South Africa	11 940	0.81
27	Israel	11 492	0.78
28	Belgium	11 277	0.76
29	Mexico	10 983	0.74
30	Austria	9 940	0.67

Source: Tables 2.7 and A1-1 from *The World of Civil Aviation 1997-2000* published by the International Civil Aviation Organisation.

Total estimated international traffic (in passenger-kilometres) for airlines of ICAO contracting States in 1997 = 1 477 540. (Table A1-1)

*The United Kingdom figure excludes traffic for Hong Kong for the last six months of 1977. This is separately listed with China as per Table 2.7.

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DCW Doc No.49
26/5/99
CORRIGENDUM
26/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

FINAL CLAUSES

CORRIGENDUM

(Presented by Australia and New Zealand)

Please replace proposed draft Article 49 as it appears in the Attachment to DCW Doc No. 49 (presented by Australia and New Zealand) with the corrected version set out below.

The substantive changes introduced in this version of the proposed amendment modify the provisions of Article 49, paragraph 5, in the principal draft (DCW Doc No. 5) by requiring the Depositary to notify the signatories of:—

- the date on which the thirtieth instrument of ratification, acceptance, approval or accession is deposited; and

- the date on which the proportion of international scheduled air traffic attributable to the States Parties having deposited such instruments constitutes at least 51% of the total traffic attributable to Member States of ICAO,

sixty days after which developments the Convention would enter into force.

The specification of these two obligations supplants a general requirement that the Depositary simply notify signatories of the date on which the Convention enters into force. Some minor, non-substantive corrections have also been made. The substantive modifications appear in shaded text.

(3 pages)

Chapter VII

Final Clauses

Article 49 - Ratification

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accept, approve of or accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated the Depositary.

3. This Convention shall enter into force on the sixtieth day following the date of deposit with the Depositary of the ~~fifteenth~~ thirtieth instrument of ratification, acceptance, approval or accession, ~~with the Depositary~~ or such greater number of States Parties as is necessary to ensure that the States Parties represent at least 51% of the total international scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization in the year 1998.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession. The Depositary shall accept the deposit of such an instrument from any State referred to in paragraph 3 of Article 51 only if ~~he~~ it is satisfied that that State has given the requisite notices of denunciation referred to in that paragraph, or is giving such notices at the time of deposit.

5. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

~~(c) the date of entry into force of this Convention;~~

(~~d~~ c) the date of the coming into force of any revision of the limits of liability established under this Convention;

(~~e~~ d) any denunciation under Article 50;

(~~f~~ e) the date of deposit of the ~~fiftieth~~ thirtieth instrument of ratification, acceptance, approval or accession;

(f) the date when the State Parties having deposited instruments of ratification, acceptance, approval or accession comprise not less than 51% of the total international scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization;

(g) the date of deposit of the 85th instrument of ratification, acceptance, approval or accession;

(h) the date when the State Parties to this Convention comprise not less than 75% of the total international scheduled air traffic of the airlines of the Member States of the International Civil Aviation Organization; and

(g i) ~~the date he gives the notices of~~ any denunciation ~~referred to in~~ under paragraph ~~3~~ 2 of Article 51.

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DCW Doc No. 50
25/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

CONSENSUS PACKAGE

(Presented by the President of the Conference)

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 19 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. For the avoidance of doubt, this Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 20.

Article 20 - Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 16 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 16 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 21 A - Limits of Liability

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the 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 destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 20 and 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, including interest. 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.

Article 22 A - Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 22 B - Advance Payments*

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payment shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the Courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.**

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

---

* The Final Act will include a resolution urging carriers to make such payments and encouraging State Parties to take appropriate measures to promote such actions.

** The Final Act will include a statement that paragraph 2 of this Article is included because of the special nature of international carriage by air.

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger may be considered as a factor, but shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the Court seised of the case.

– END –

DCW Doc No. 51
25/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

PROPOSED NEW ARTICLE 35 A:

SITUATIONS NOT COVERED BY CHAPTER V

(Presented by the United States of America)

1. PROPOSAL

1.1 It is proposed that a new Article 35 A be added following Article 35 to clarify that, while the Convention provides for suits against contracting carriers and actual carriers, it does not provide for suits against a carrier that is neither the contracting nor the actual carrier with respect to the particular passenger or consignor.

2. REASONS

2.1 Following the crash of Swissair Flight 111 in September 1998, plaintiffs representing a number of passengers ticketed by Swissair have brought an action against Delta Air Lines as an agent of Swissair. Delta had ticketed a number of other passengers on the Swissair flight under a code-share arrangement with Swissair.

2.2 We propose adding language to Chapter V to remove any doubt about which carriers are subject to suit under the new Convention.

2.3 This same situation also exists in the case of successive carriage under Article 30. Our proposed new Article clarifies that situation as well. Accordingly, we propose that a new Article 35 A be added following Article 35 which would read as follows:

"Article 35 A – Situations Not Covered by Chapter V"

> "This Chapter does not apply to passengers, consignors, or persons acting on their behalf when their contract of carriage is with the carrier operating the aircraft. Nor does it apply to successive carriage within the meaning of Article 30."

– END –

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DCW Doc No. 52
26/5/99

DRAFT FINAL ACT

of the International Conference on Air Law held under the auspices of the International Civil Aviation Organization at Montreal from 10 to 28 May 1999

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 10 to 28 May 1999 for the purpose of considering the draft Articles of the *Convention for the Unification of Certain Rules for International Carriage by Air,* prepared by the Legal Committee of the International Civil Aviation Organization and the *Special Group on the Modernization and Consolidation of the "Warsaw System"* established by the Council of the International Civil Aviation Organization.

The Governments of the following 120 States were represented at the Conference:

Afghanistan, the Islamic State of
Algeria, the People's Democratic Republic of
Angola, the Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Azerbaijani Republic, the
Bahamas, the Commonwealth of the
Bahrain, the State of
Bangladesh, the People's Republic of
Belgium, the Kingdom of
Belize
Benin, the Republic of
Bolivia, the Republic of
Botswana, the Republic of
Brazil, the Federative Republic of
Burkina Faso
Cambodia, the Kingdom of
Cameroon, the Republic of
Canada
Cape Verde, the Republic of
Central African Republic, the
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Cyprus, the Republic of
Czech Republic, the
Denmark, the Kingdom of
Dominican Republic, the
Egypt, the Arab Republic of
Ethiopia, Federal Democratic Republic of
Finland, the Republic of
French Republic, the
Gabonese Republic, the
Gambia, the Republic of the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Guinea-Bissau, the Republic of
Haiti, the Republic of
Hellenic Republic, the
Holy See, the
Iceland, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Ireland
Israel, the State of
Italian Republic, the
Jamaica
Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Lesotho, the Kingdom of
Liberia, the Republic of

Lithuania, the Republic of
Luxembourg, the Grand Duchy of
Madagascar, the Republic of
Malawi, the Republic of
Malta, the Republic of
Marshall Islands, the Republic of the
Mauritius, the Republic of
Mexican States, the United
Monaco, the Principality of
Mongolia
Morocco, the Kingdom of
Mozambique, the Republic of
Namibia, the Republic of
Netherlands, the Kingdom of the
New Zealand
Niger, the Republic of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Oman, the Sultanate of
Pakistan, the Islamic Republic of
Panama, the Republic of
Paraguay, the Republic of
Peru, the Republic of
Philippines, the Republic of the
Poland, the Republic of
Portuguese Republic, the
Qatar, the State of
Republic of Korea, the
Romania
Russian Federation, the
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Singapore, the Republic of
Slovak Republic, the
Slovenia, the Republic of
South Africa, the Republic of
Spain, the Kingdom of
Sri Lanka, the Democratic Socialist Republic of
Sudan, the Republic of the
Swaziland, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Syrian Arab Republic, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of
Uganda, the Republic of
Ukraine
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United States of America, the
Uruguay, the Eastern Republic of
Uzbekistan, the Republic of
Venezuela, the Republic of
Viet Nam, the Socialist Republic of
Yemen, the Republic of
Zambia, the Republic of
Zimbabwe, the Republic of

The following 11 international organizations were represented by Observers:

African Civil Aviation Commission (AFCAC)
Arab Civil Aviation Commission (ACAC)
European Civil Aviation Conference (ECAC)
European Community (EC)
International Air Transport Association (IATA)
International Chamber of Commerce (ICC)
International Law Association (ILA)
International Union of Aviation Insurers (IUAI)
Interstate Aviation Committee (IAC)
Latin American Association of Air and Space Law (ALADA)
Latin American Civil Aviation Commission (LACAC)

The Conference unanimously elected as President Dr. Kenneth Rattray (Jamaica) and further unanimously elected as Vice-Presidents:

First Vice-President – Mr. A.J.H. Kjellin (Sweden)
Second Vice-President – Mr. A.K. Mensah (Ghana)
Third Vice-President – Mr. R.H.Wang (China)
Fourth Vice-President – Mr. H. Mahfoud (Syrian Arab Republic)

The Secretary General of the Conference was Mr. Renato Cláudio Costa Pereira, Secretary General of the International Civil Aviation Organization. Dr. Ludwig Weber, Director of the Legal Bureau of the International Civil Aviation Organization was the Executive Secretary of the Conference. He was assisted by Mr. Silvério Espínola, Principal Legal Officer, who was the Deputy Secretary, and by Messrs. John Augustin, Legal Officer, and Arie Jakob, Associate Expert, who were Assistant Secretaries of the Conference and by other officials of the Organization.

The Conference established a Commission of the Whole and the following Committees:

Credentials Committee

Chairman:	Mr. S. Ahmad	(Pakistan)
Members:	Mr. J.K. Abonouan	(Côte d'Ivoire)
	Mr. Y. Mäkelä	(Finland)
	Mr. A.F.O. Al-Momani	(Jordan)
	Mr. E. Espinoza	(Panama)

Drafting Committee

Chairman:	Mr. A. Jones	(United Kingdom)
Members:	Mr. E. Martínez Gondra	(Argentina)
	Mr. M.A. Gamboa	(Argentina)
	Mr. H.L. Sánchez	(Argentina)
	Mr. M.J. Moatshe	(Botswana)
	Mr. K. Mosupukwa	(Botswana)
	Mr. J. Escobar	(Brazil)
	Mr. G. Pereira	(Brazil)
	Mr. G.H. Lauzon	(Canada)
	Mrs. E.A. MacNab	(Canada)
	Ms. S.H.D. Cheung	(China)
	Mr. K.Y. Kwok	(China)
	Ms. F. Liu	(China)
	Mr. J.K. Abonouan	(Cote d'Ivoire)
	Mr. A. Arango	(Cuba)
	Mr. K. El Hussainy	(Egypt)
	Mr. J. Courtial	(France)
	Mr. A. Veillard	(France)
	Mr. D. Videau	(France)
	Mr. S. Göhre	(Germany)

	Mr. D. von Elm	(Germany)
	Mr. R.K. Maheshwari	(India)
	Mr. A. Aoki	(Japan)
	Mr. J. Iwama	(Japan)
	Mr. Y. Koga	(Japan)
	Mr. T. Shimura	(Japan)
	Mr. S. Eid	(Lebanon)
	Mr. V. Poonoosamy	(Mauritius)
	Mrs. M. Reyes de Vásquez	(Panama)
	Mr. A. Bavykin	(Russian Federation)
	Mr. N. Ostroumov	(Russian Federation)
	Mr. S.A.F. Al-Ghamdi	(Saudi Arabia)
	Mr. L. Adrover	(Spain)
	Ms. M.-L. Huidobro	(Spain)
	Mr. A.J.H. Kjellin	(Sweden)
	Mr. P. Smith	(United Kingdom)
	Mr. D. Horn	(United States)
	Mr. P.B. Schwarzkopf	(United States)
	Mr. D.S. Newman	(United States)

Friends of the Chairman's Group

Chairman:	Dr. Kenneth Rattray	(Jamaica)
Members:	Ms. C. Boughton	(Australia)
	Mr. J. Aleck	(Australia)
	Mr. P. Yang	(Cameroon)
	Mr. T. Tekou	(Cameroon)
	Mr. G.H. Lauzon	(Canada)
	Mrs. E.A. MacNab	(Canada)
	Mr. A.R. Lisboa	(Chile)
	Mrs. A. Valdés	(Chile)
	Mr. R.H. Wang	(China)
	Ms. S.H.D. Cheung	(China)
	Ms. F. Liu	(China)
	Mr. X. Zhang	(China)
	Mr. K. El Hussainy	(Egypt)
	Mr. J. Bernière	(France)
	Mr. M.-Y. Peissik	(France)
	Mr. J. Courtial	(France)
	Mr. C. Serre	(France)
	Mr. D. Videau	(France)
	Mr. A.K. Mensah	(Ghana)
	Mr. V.S. Madan	(India)
	Mr. R.K. Maheshwari	(India)
	Mr. A. Aoki	(Japan)
	Mr. Y. Kawarabayashi	(Japan)
	Mr. S. Eid	(Lebanon)
	Mr. V. Poonoosamy	(Mauritius)

Ms. H.L. Talbot	(New Zealand)
Mr. A.G. Mercer	(New Zealand)
Mr. S.N. Ahmad	(Pakistan)
Mr. N. Sharwani	(Pakistan)
Mr. A. Bavykin	(Russian Federation)
Mr. V. Bordunov	(Russian Federation)
Mr. N. Ostroumov	(Russian Federation)
Mr. S.A.F. Al-Ghamdi	(Saudi Arabia)
Mr. S. Tiwari	(Singapore)
Ms. S.H. Tan	(Singapore)
Mr. J. Kok	(Singapore)
Mr. A. Čičerov	(Slovenia)
Mr. S.D. Liyanage	(Sri Lanka)
Mr. A.J.H. Kjellin	(Sweden)
Mr. N.A. Gradin	(Sweden)
Mr. L.-G. Malmberg	(Sweden)
Mr. M. Ryff	(Switzerland)
Mr. H. Mahfoud	(Syrian Arab Republic)
Mr. N. Chataoui	(Tunisia)
Mr. S. Kilani	(Tunisia)
Mr. A. Jones	(United Kingdom)
Mr. P. Smith	(United Kingdom)
Mr. D. Horn	(United States)
Mr. D.S. Newman	(United States)
Mr. P.B. Schwarzkopf	(United States)
Mr. B.L. Labarge	(United States)
Mr. C.B. Borucki	(Uruguay)
Mr. A. Sanes de Leon	(Uruguay)
Mr. V.T. Dinh	(Viet Nam)
Mr. X.T. Lai	(Viet Nam)

Following its deliberations, the Conference adopted the text of the *Convention for the Unification of Certain Rules for International Carriage by Air.*

The said Convention has been opened for signature at Montreal this day.

The Conference furthermore adopted [by consensus] the following Resolutions and Statement:

(to be inserted)

IN WITNESS WHEREOF the Delegates have signed this Final Act.

DONE at Montreal on the twenty-eighth day of May of the year One Thousand Nine Hundred and Ninety-Nine in six authentic texts in the English, Arabic, Chinese, French, Russian and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

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DCW Doc No. 53
26/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT RESOLUTIONS AND STATEMENT FOR INCLUSION IN THE FINAL ACT

(Presented by the Secretariat)

DRAFT RESOLUTION NO. 1

MINDFUL of the importance of the consolidation and modernization of certain rules relating to international carriage by air, thereby restoring the necessary degree of uniformity and clarity of such rules;

ACKNOWLEDGING that the necessary consolidation and modernization of these rules can only be adequately achieved through collective State action in accordance with the principles and rules of international law;

AFFIRMING that the achievements and benefits embodied in the *Convention for the Unification of Certain Rules for International Carriage by Air* should be implemented for the benefit of all parties concerned as soon as possible;

THE CONFERENCE:

1. *URGES* States to ratify the *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on 28 May 1999 at Montreal, as soon as possible and to deposit an instrument of ratification with the International Civil Aviation Organization (ICAO) in accordance with Article 49 of said Convention;

2. *DIRECTS* the Secretary General of ICAO to bring this resolution immediately to the attention of States with the objective mentioned above.

DRAFT RESOLUTION NO. 2

RECOGNIZING the tragic consequences that flow from aircraft accidents;

MINDFUL OF the plight of families of victims, or survivors of such accidents;

TAKING INTO ACCOUNT the immediate economic needs of many such families or survivors,

THE CONFERENCE:

1. *URGES* carriers to make advance payments based on the immediate economic needs of families of victims, or survivors of accidents;

2. *ENCOURAGES* States Parties to the *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on 28 May 1999 at Montreal, to take appropriate measures under national law to promote such action by carriers.

DRAFT RESOLUTION NO. 3

RECOGNIZING the prime importance of safety for the orderly development of international civil aviation; and

RECOGNIZING the importance of the protection of passengers, crew and air transport workers; and

WHEREAS the transportation or carriage of dangerous goods by air is regulated internationally by Annex 18 to the *Convention on International Civil Aviation*; and

WHEREAS the provisions of said Annex require a shipper that offers any package of dangerous goods for transport by air to ensure that the goods are not forbidden for transport by air and are properly classified, packed, marked, labelled and accompanied by a properly executed dangerous goods transport document as specified in the said Annex;

THE CONFERENCE RESOLVES:

THAT each State take all appropriate measures to ensure continued compliance by carriers, shippers and, freight forwarders with the provisions of Annex 18 to the *Convention on International Civil Aviation*; and

THAT carriers, shippers and freight forwarders comply with all applicable safety measures, including those taken in application of Annex 18 to the *Convention on International Civil Aviation*.

DRAFT STATEMENT

For the purpose of interpretation of *the Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on 28 May 1999,

THE CONFERENCE STATES AS FOLLOWS:

1. with reference to Article 16, paragraph 1 of the Convention, the expression "bodily injury" is included on the basis of the fact that in some States damages for mental injuries are recoverable under certain circumstances, that jurisprudence in this area is developing and that it is not intended to interfere with this development, having regard to jurisprudence in areas other than international carriage by air;

2. with reference to Article 27 paragraphs 2 and 3, these provisions are included in view of the special nature of international carriage by air.

– END –

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DCW Doc No. 54
26/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

REPORT OF THE DRAFTING COMMITTEE ON ITS SIXTH MEETING

ARTICLES 34, 35, 39, 40, 41, 45 and 48

(Presented by the Chairman of the Drafting Committee)

During its Sixth Meeting held on 26 May 1999, the Drafting Committee reviewed the above-mentioned Articles. As a result of its work, the Drafting Committee made a number of modifications which are reflected in the text set out below.

Consequential linguistic and editorial points were noted by the Secretariat to be taken into account.

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

Article 34 - Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the ~~agreement~~ contract referred to in Article 33, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the ~~agreement~~ contract, the latter solely for the carriage which it performs.

For consistency with Article 33

Article 35 - Mutual Liability

1. The acts and omissions of the actual carrier and of ~~his~~ its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 20, 21 A, 21 B and 21 C of this Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 21 A of this Convention, shall not affect the actual carrier unless agreed to by it.

Text reinserted from DCW Doc No. 4 with editorial modifications

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Secretariat Note:

The following abbreviations are used:

EN	-	English Language
FR	-	French Language
SP	-	Spanish Language
RU	-	Russian Language
AR	-	Arabic Language
CH	-	Chinese Language

Underline
highlights text to be reviewed from translation/linguistic viewpoint

Redline
highlights new text added

~~Strikeout~~
highlights text to be deleted

Article 39 - Addressee of Claims

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

FR to be reviewed

Article 40 - Additional Jurisdiction

Any action for damages contemplated in Article 39 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 27 of this Convention, or before the court having jurisdiction at the place where the actual carrier has its domicile ~~is ordinarily resident~~ or has its principal place of business.

For consistency with Article 27

RU version to be checked

Article 41 - Invalidity of Contractual Provisions

~~1.~~ Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole ~~agreement~~ contract, which shall remain subject to the provisions of this Chapter.

For consistency with Article 33

~~2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.~~

This issue is covered by Article 17. 2(a)

Article 45 - Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

For consistency

Article 48 - Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to: ~~the carriage of persons, cargo and baggage for its military authorities on aircraft registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.~~

Amended as in DCW Doc No. 13 with modifications

(a) international transportation by air performed directly by that State Party, or any territory under its authority, and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

— END —

DCW Doc No. 55
27/5/99

INTERNATIONAL CONFERENCE ON
AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

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CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 - Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State 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 carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V. subject to the terms contained therein.

Article 2 - Carriage Performed by State - Postal Items

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 - Passengers and Baggage

1. In respect of carriage of passengers an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 - Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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 cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 - Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 6 - Description of Air Waybill

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 by the carrier. The third part shall be signed by the carrier who shall hand it 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, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7 - Documentation for Multiple Packages

When there is more than one package:

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 8 - Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 7 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 9 - Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 10 - Evidentiary Value of Documentation

1. The air waybill or the cargo receipt 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 cargo receipt 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 or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 11 - Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 12. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 12 - Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 11, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, 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 13 - Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 11 and 12, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 14 - Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 11, 12 and 13 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 11, 12 and 13 can only be varied by express provision in the air waybill or the cargo receipt.

Article 15 - Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities 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, its 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 and Extent of Compensation for Damage

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 17 - Damage to Cargo

1. 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 event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway 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 transhipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 18 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage, or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 19 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. For the avoidance of doubt, this Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 20.

Article 20 - Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 16 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 16 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 21 - Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the 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 destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 20 and 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, including interest. 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.

Article 22 - Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 the judgment. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect 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 State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 20 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 21; 15 000 monetary units per passenger with respect to paragraph 2 of Article 21; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 21. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 20 and 21 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 23 - Review of Limits

1. Without prejudice to the provisions of Article 24 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 20, 21 and 22 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 22.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall

not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 24 - Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 25 - Invalidity of Contractual Provisions

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

Article 26 - Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 27 - Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 28 - Basis of Claims

In the carriage of passengers, baggage, and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 29 - Servants, Agents - Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 30 - Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or despatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 31 - Death of Person Liable

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 or her estate.

Article 32 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger may be considered as a factor, but shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 33 - Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 32.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 34 - Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of 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 that period shall be determined by the law of the court seised of the case.

Article 35 - Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention, and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her, can take action only against the carrier which 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 which 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 36 - Right of Recourse against Third Parties

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

Combined Carriage

Article 37 - Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 17, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 38 - Contracting Carrier - Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 39 - Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 38, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 40 - Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 20, 21, 22 and 23. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 21, shall not affect the actual carrier unless agreed to by it.

Article 41 - Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 11 shall only be effective if addressed to the contracting carrier.

Article 42 - Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 43 - Aggregation of Damages

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

Article 44 - Addressee of Claims

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

Article 45 - Additional Jurisdiction

Any action for damages contemplated in Article 44 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 32, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 46 - Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter 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 Chapter.

Article 47 - Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 44, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Article 48 - Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 49 - Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 50 - Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 7 inclusive relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 51 - Definition of Days

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

Article 52 - Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

Chapter VII

Final Clauses

Article 53 - Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 22, 32, 45 and paragraph (b) of Article 52, includes a Regional Economic Integration Organisation. For the purpose of Article 23, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not include a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 54.

Article 54 - Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 - Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Signed at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier* Signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocols Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol done at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 - States with more than one System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 22 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 27 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

[SIGNATURES]

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DCW Doc No. 56
26/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DECLARATION BY THE DELEGATION OF THE REPUBLIC OF PERU FOR INCLUSION IN THE FINAL ACT OF THE INTERNATIONAL CONFERENCE ON AIR LAW CONCERNING THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

(Presented by Peru)

1. The Delegation of the Republic of Peru considers that it would have been appropriate to retain the word "nature" as originally mentioned in Article 5 c) and Article 10, paragraph 2 of the draft, for the following reasons:

- It responds to a basic safety concept, i.e. that the national authorities know the nature of the cargo carried, which is in turn fundamental to guarantee the safety of the aircraft, its crew members, passengers and third parties on the surface.

- ICAO Annex 18 contains regulations which refer to the obligatory declaration by the shipper, in cases of carriage by air, of cargoes considered to be dangerous goods. That, however, does not guarantee that a shipper or carrier of bad faith will fail to declare goods which, though not classified as dangerous goods, may represent a danger to the safety of the State or third parties.

- In cases of multimodal transport, the international regulations, and those which apply in many States, require that the nature of the cargo carried be indicated in the manifests or waybills.

- The concept of "nature" is understood as a general reference to the type, class or kind of cargo transported and not as a specific and detailed description of the said cargo. For example, a cargo of gold ingots could be described as "metals" or "mineral products" if an attempt was being made to avoid giving details which could jeopardize the said cargo.

2. The Delegation of Peru expresses its concern since the final clauses do not establish the manner or procedure by means of which a State Party may retract a denunciation it might have made to the Convention (Article 50 of the draft).

3. The Delegation of Peru considers the absence in the draft of any reference to its duration as well as a procedure for amending it to be inappropriate.

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DCW Doc No. 57
28/5/99

CONVENTION

for the Unification of Certain Rules for
International Carriage by Air
Signed at Montreal on 28 May 1999

CONVENTION

pour l'unification de certaines règles
relatives au transport aérien international
Signée à Montréal le 28 mai 1999

CONVENIO

para la unificación de ciertas reglas
para el transporte aéreo internacional
Firmado en Montreal el 28 de mayo de 1999

КОНВЕНЦИЯ

для унификации некоторых правил
международных воздушных перевозок
Подписана в Монреале 28 мая 1999 года

الاتفاقية

بشأن توحيد بعض قواعد
النقل الجوي الدولي
وقعت في مونتريال في ٢٨ مايو/ أيار ١٩٩٩

1999 年 5 月 28 日
在蒙特利尔签订的
《统一国际航空运输某些规则的公约》

MONTREAL
28 MAY 1999

МОНРЕАЛЬ
28 МАЯ 1999 ГОДА

MONTRÉAL
28 MAI 1999

مونتريال
٢٨ مايو/ أيار ١٩٩٩

MONTREAL
28 DE MAYO DE 1999

蒙特利尔
1999 年 5 月 28 日

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CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 — Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State 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 carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 — Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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 cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 — Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 6 — Document Relating to the Nature of the Cargo

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 — Description of Air Waybill

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 by the carrier. The third part shall be signed by the carrier who shall hand it 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, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 — Documentation for Multiple Packages

When there is more than one package:

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 — Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 — Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 — Evidentiary Value of Documentation

1. The air waybill or the cargo receipt 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 cargo receipt 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 or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

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 cannot be communicated with, the consignor resumes its right of disposition.

Article 13 — Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, 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 — Enforcement of the Rights of Consignor and Consignee

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

Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties

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

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

Article 16 — Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities 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, its 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 and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers — Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo

1. 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 event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway 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 transhipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the 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 destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and 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, including interest. 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.

Article 23 — Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 — Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval,

the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 — Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions

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

Article 27 — Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28 — Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims

In the carriage of passengers, baggage and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, 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 31 — Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable

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 or her estate.

Article 33 — Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft,

or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34 — Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35 — Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of 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 that period shall be determined by the law of the court seised of the case.

Article 36 — Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which 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 which 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 37 — Right of Recourse against Third Parties

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

Combined Carriage

Article 38 — Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions

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

Article 43 — Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44 — Aggregation of Damages

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

Article 45 — Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately.

If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 46 — Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47 — Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter 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 Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Other Provisions

Article 49 — Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50 — Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 — Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52 — Definition of Days

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

Chapter VII

Final Clauses

Article 53 — Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 54.

Article 54 — Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 — Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier*, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by

both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 — States with more than one System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57 — Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

CONVENTION

POUR L'UNIFICATION DE CERTAINES RÈGLES RELATIVES AU TRANSPORT AÉRIEN INTERNATIONAL

RECONNAISSANT l'importante contribution de la Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Varsovie le 12 octobre 1929, ci-après appelée la «Convention de Varsovie» et celle d'autres instruments connexes à l'harmonisation du droit aérien international privé,

RECONNAISSANT la nécessité de moderniser et de refondre la Convention de Varsovie et les instruments connexes,

RECONNAISSANT l'importance d'assurer la protection des intérêts des consommateurs dans le transport aérien international et la nécessité d'une indemnisation équitable fondée sur le principe de réparation,

RÉAFFIRMANT l'intérêt d'assurer le développement d'une exploitation ordonnée du transport aérien international et un acheminement sans heurt des passagers, des bagages et des marchandises, conformément aux principes et aux objectifs de la Convention relative à l'aviation civile internationale faite à Chicago le 7 décembre 1944,

CONVAINCUS que l'adoption de mesures collectives par les États en vue d'harmoniser davantage et de codifier certaines règles régissant le transport aérien international est le meilleur moyen de réaliser un équilibre équitable des intérêts,

LES ÉTATS PARTIES À LA PRÉSENTE CONVENTION SONT CONVENUS DE CE QUI SUIT:

Chapitre I

Généralités

Article 1 — Champ d'application

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 transport aérien.

2. Au sens de la présente convention, l'expression *transport international* s'entend de 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 États parties, soit sur le territoire d'un seul État partie si une escale est prévue sur le territoire d'un autre État, même si cet État n'est pas un État partie. Le transport sans une telle escale entre deux points du territoire d'un seul État partie n'est pas considéré comme international au sens de la présente convention.

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

4. La présente convention s'applique aussi aux transports visés au Chapitre V, sous réserve des dispositions dudit chapitre.

Article 2 — Transport effectué par l'État et transport d'envois postaux

1. La présente convention s'applique aux transports effectués par l'État ou les autres personnes juridiques de droit public, dans les conditions prévues à l'article 1.

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 du paragraphe 2 ci-dessus ne s'appliquent pas au transport des envois postaux.

Chapitre II

Documents et obligations des Parties relatifs au transport des passagers, des bagages et des marchandises

Article 3 — Passagers et bagages

1. Dans le transport des passagers, un titre de transport individuel ou collectif 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'un même État partie et si une ou plusieurs escales sont prévues sur le territoire d'un autre État, l'indication d'une de ces escales.

2. L'emploi de tout autre moyen constatant les indications qui figurent au paragraphe 1 peut se substituer à la délivrance du titre de transport mentionné dans ce paragraphe. Si un tel autre moyen est utilisé, le transporteur offrira de délivrer au passager un document écrit constatant les indications qui y sont consignées.

3. Le transporteur délivrera au passager une fiche d'identification pour chaque article de bagage enregistré.

4. Il sera donné au passager un avis écrit indiquant que, lorsque la présente convention s'applique, elle régit la responsabilité des transporteurs en cas de mort ou de lésion ainsi qu'en cas de destruction, de perte ou d'avarie des bagages, ou de retard.

5. L'inobservation des dispositions des paragraphes précédents 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 la responsabilité.

Article 4 — Marchandises

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 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 marchandises permettant l'identification de l'expédition et l'accès aux indications enregistrées par ces autres moyens.

Article 5 — Contenu de la lettre de transport aérien ou du récépissé de marchandises

La lettre de transport aérien ou le récépissé de marchandises 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'un même État partie et qu'une ou plusieurs escales sont prévues sur le territoire d'un autre État, l'indication d'une de ces escales;

c) la mention du poids de l'expédition.

Article 6 — Document relatif à la nature de la marchandise

Si nécessaire, l'expéditeur peut être tenu d'accomplir les formalités de douane, de police et d'autres autorités publiques pour émettre un document indiquant la nature de la marchandise. Cette disposition ne crée pour le transporteur aucun devoir, obligation ni responsabilité.

Article 7 — Description de la lettre de transport aérien

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, ce dernier est considéré, jusqu'à preuve du contraire, comme agissant au nom de l'expéditeur.

Article 8 — Documents relatifs à plusieurs colis

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 de marchandises distincts, lorsque les autres moyens visés au paragraphe 2 de l'article 4 sont utilisés.

Article 9 — Inobservation des dispositions relatives aux documents obligatoires

L'inobservation des dispositions des articles 4 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 — Responsabilité pour les indications portées dans les documents

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 marchandises ou pour insertion dans les données enregistrées par les autres moyens prévus au paragraphe 2 de l'article 4. Ces dispositions s'appliquent aussi au cas où la personne agissant au nom de l'expéditeur est également l'agent du transporteur.

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, en raison d'indications et de déclarations irrégulières, inexactes ou incomplètes fournies et faites par lui ou en son nom.

3. Sous réserve des dispositions des paragraphes 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, en raison d'indications et de déclarations irrégulières, inexactes ou incomplètes insérées par lui ou en son nom dans le récépissé de marchandises ou dans les données enregistrées par les autres moyens prévus au paragraphe 2 de l'article 4.

Article 11 — Valeur probante des documents

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

Article 12 — Droit de disposer de la marchandise

1. L'expéditeur a le droit, à la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant à l'aéroport de départ ou de destination, soit en l'arrêtant en cours de route lors d'un atterrissage, soit en la faisant livrer 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'aéroport 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 instructions de l'expéditeur est impossible, le transporteur doit l'en aviser immédiatement.

3. Si le transporteur exécute les instructions 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 joint, l'expéditeur reprend son droit de disposition.

Article 13 — Livraison de la marchandise

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 — Possibilité de faire valoir les droits de l'expéditeur et du destinataire

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 nom propre, 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 — Rapports entre l'expéditeur et le destinataire ou rapports entre les tierces parties

1. Les articles 12, 13 et 14 ne portent préjudice ni aux rapports entre l'expéditeur et le destinataire, ni aux rapports mutuels des tierces parties dont les droits proviennent de l'expéditeur ou du destinataire.

2. Toute clause dérogeant aux dispositions des articles 12, 13 et 14 doit être inscrite dans la lettre de transport aérien ou dans le récépissé de marchandises.

Article 16 — Formalités de douane, de police ou d'autres autorités publiques

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, de police ou d'autres autorités publiques. 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 ou mandataires.

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

Chapitre III

Responsabilité du transporteur et étendue de l'indemnisation du préjudice

Article 17 — Mort ou lésion subie par le passager — Dommage causé aux bagages

1. Le transporteur est responsable du préjudice survenu en cas de mort ou de lésion corporelle subie par un passager, par cela seul que l'accident qui a causé la mort ou la lésion s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement ou de débarquement.

2. Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés, par cela seul que le fait qui a causé la destruction, la perte ou l'avarie s'est produit à bord de l'aéronef ou au cours de toute période durant laquelle le transporteur avait la garde des bagages enregistrés. Toutefois, le transporteur n'est pas responsable si et dans la mesure où le dommage résulte de la nature ou du vice propre des bagages. Dans le cas des bagages non enregistrés, notamment des effets personnels, le transporteur est responsable si le dommage résulte de sa faute ou de celle de ses préposés ou mandataires.

3. Si le transporteur admet la perte des bagages enregistrés ou si les bagages enregistrés ne sont pas arrivés à destination dans les vingt et un jours qui suivent la date à laquelle ils auraient dû arriver, le passager est autorisé à faire valoir contre le transporteur les droits qui découlent du contrat de transport.

4. Sous réserve de dispositions contraires, dans la présente convention le terme «bagages» désigne les bagages enregistrés aussi bien que les bagages non enregistrés.

Article 18 — Dommage causé à la marchandise

1. 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.

2. Toutefois, le transporteur n'est pas responsable s'il établit, et dans la mesure où il établit, que la destruction, la perte ou l'avarie de la marchandise résulte 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 ou mandataires;

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.

3. Le transport aérien, au sens du paragraphe 1 du présent article, comprend la période pendant laquelle la marchandise se trouve sous la garde du transporteur.

4. La période du transport aérien ne couvre aucun transport terrestre, maritime ou par voie d'eau intérieure 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 du contraire, résulter d'un fait survenu pendant le transport aérien. Si, sans le consentement de l'expéditeur, le transporteur remplace en totalité ou en partie le transport convenu dans l'entente conclue entre les parties comme étant le transport par voie aérienne, par un autre mode de transport, ce transport par un autre mode sera considéré comme faisant partie de la période du transport aérien.

Article 19 — Retard

Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de passagers, de bagages ou de marchandises. Cependant, le transporteur n'est pas responsable du dommage causé par un retard s'il prouve que lui, ses préposés et mandataires ont pris toutes les mesures qui pouvaient raisonnablement s'imposer pour éviter le dommage, ou qu'il leur était impossible de les prendre.

Article 20 — Exonération

Dans le cas où il fait la preuve que la négligence ou un autre acte ou omission préjudiciable de la personne qui demande réparation ou de la personne dont elle tient ses droits a causé le dommage ou y a contribué, le transporteur est exonéré en tout ou en partie de sa responsabilité à l'égard de cette personne, dans la mesure où cette négligence ou cet autre acte ou omission préjudiciable a causé le dommage ou y a contribué. Lorsqu'une demande en réparation est introduite par une personne autre que le passager, en raison de la mort ou d'une lésion subie par ce dernier, le transporteur est également exonéré en tout ou en partie de sa responsabilité dans la mesure où il prouve que la négligence ou un autre acte ou omission préjudiciable de ce passager a causé le dommage ou y a contribué. Le présent article s'applique à toutes les dispositions de la convention en matière de responsabilité, y compris le paragraphe 1 de l'article 21.

Article 21 — Indemnisation en cas de mort ou de lésion subie par le passager

1. Pour les dommages visés au paragraphe 1 de l'article 17 et ne dépassant pas 100 000 droits de tirage spéciaux par passager, le transporteur ne peut exclure ou limiter sa responsabilité.

2. Le transporteur n'est pas responsable des dommages visés au paragraphe 1 de l'article 17 dans la mesure où ils dépassent 100 000 droits de tirage spéciaux par passager, s'il prouve:

a) que le dommage n'est pas dû à la négligence ou à un autre acte ou omission préjudiciable du transporteur, de ses préposés ou de ses mandataires, ou

b) que ces dommages résultent uniquement de la négligence ou d'un autre acte ou omission préjudiciable d'un tiers.

Article 22 — Limites de responsabilité relatives aux retards, aux bagages et aux marchandises

1. En cas de dommage subi par des passagers résultant d'un retard, aux termes de l'article 19, la responsabilité du transporteur est limitée à la somme de 4 150 droits de tirage spéciaux par passager.

2. Dans le transport de bagages, la responsabilité du transporteur en cas de destruction, perte, avarie ou retard est limitée à la somme de 1 000 droits de tirage spéciaux par passager, sauf déclaration spéciale d'intérêt à la livraison faite par le passager au moment de la remise des bagages enregistrés au transporteur et moyennant le paiement éventuel d'une somme supplémentaire. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il prouve qu'elle est supérieure à l'intérêt réel du passager à la livraison.

3. Dans le transport de marchandises, la responsabilité du transporteur, en cas de destruction, de perte, d'avarie ou de retard, 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 somme supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

4. En cas de destruction, de perte, d'avarie ou de retard d'une partie 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 destruction, la perte, l'avarie ou le retard d'une partie des marchandises, ou d'un objet qui y est contenu, affecte la valeur d'autres colis couverts par la même lettre de transport aérien ou par le même récépissé ou, en l'absence de ces documents, par les mêmes indications consignées par les autres moyens visés à l'article 4, paragraphe 2, le poids total de ces colis doit être pris en considération pour déterminer la limite de responsabilité.

5. Les dispositions des paragraphes 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 transporteur, de ses préposés ou de ses mandataires, 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 ou de mandataires, la preuve soit également apportée que ceux-ci ont agi dans l'exercice de leurs fonctions.

6. Les limites fixées par l'article 21 et 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 de procès exposés par le demandeur, intérêts compris. 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.

Article 23 — Conversion des unités monétaires

1. Les sommes indiquées en droits de tirage spéciaux dans la présente convention 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'un État partie 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'un État partie qui n'est pas membre du Fonds monétaire international, est calculée de la façon déterminée par cet État.

2. Toutefois, les États qui ne sont pas membres du Fonds monétaire international et dont la législation ne permet pas d'appliquer les dispositions du paragraphe 1 du présent article, 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 prescrite à l'article 21 est fixée, dans les procédures judiciaires sur leur territoire, à la somme de 1 500 000 unités monétaires par passager; 62 500 unités monétaires par passager pour ce qui concerne le paragraphe 1 de l'article 22; 15 000 unités monétaires par passager pour ce qui concerne le paragraphe 2 de l'article 22; et 250 unités monétaires par kilogramme pour ce qui concerne le paragraphe 3 de l'article 22. Cette unité monétaire correspond à soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Les sommes peuvent être converties dans la monnaie nationale concernée en chiffres ronds. La conversion de ces sommes en monnaie nationale s'effectuera conformément à la législation de l'État en cause.

3. Le calcul mentionné dans la dernière phrase du paragraphe 1 du présent article et la conversion mentionnée au paragraphe 2 du présent article sont effectués de façon à exprimer en monnaie nationale de l'État partie la même valeur réelle, dans la mesure du possible, pour les montants prévus aux articles 21 et 22, que celle qui découlerait de l'application des trois premières phrases du paragraphe 1 du présent article. Les États parties communiquent au dépositaire leur méthode de calcul conformément au paragraphe 1 du présent article ou les résultats de la conversion conformément au paragraphe 2 du présent article, selon le cas, lors du dépôt de leur instrument de ratification, d'acceptation ou d'approbation de la présente convention ou d'adhésion à celle-ci et chaque fois qu'un changement se produit dans cette méthode de calcul ou dans ces résultats.

Article 24 — Révision des limites

1. Sans préjudice des dispositions de l'article 25 de la présente convention et sous réserve du paragraphe 2 ci-dessous, les limites de responsabilité prescrites aux articles 21, 22 et 23 sont révisées par le dépositaire tous les cinq ans, la première révision intervenant à la fin de la cinquième année suivant la date d'entrée en vigueur de la présente convention, ou si la convention n'entre pas en vigueur dans les cinq ans qui suivent la date à laquelle elle est pour la première fois ouverte à la signature, dans l'année de son entrée en vigueur, moyennant l'application d'un coefficient pour inflation correspondant au taux cumulatif de l'inflation depuis la révision précédente ou, dans le cas d'une première révision, depuis la date d'entrée en vigueur de la convention. La mesure du taux d'inflation à utiliser pour déterminer le coefficient pour inflation est la moyenne pondérée des taux annuels de la hausse ou de la baisse des indices de prix à la consommation des États dont les monnaies composent le droit de tirage spécial cité au paragraphe 1 de l'article 23.

2. Si la révision mentionnée au paragraphe précédent conclut que le coefficient pour inflation a dépassé 10 %, le dépositaire notifie aux États parties une révision des limites de responsabilité. Toute révision ainsi adoptée prend effet six mois après sa notification aux États parties. Si, dans les trois mois

qui suivent cette notification aux États parties, une majorité des États parties notifie sa désapprobation, la révision ne prend pas effet et le dépositaire renvoie la question à une réunion des États parties. Le dépositaire notifie immédiatement à tous les États parties l'entrée en vigueur de toute révision.

3. Nonobstant le paragraphe 1 du présent article, la procédure évoquée au paragraphe 2 du présent article est applicable à tout moment, à condition qu'un tiers des États parties exprime un souhait dans ce sens et à condition que le coefficient pour inflation visé au paragraphe 1 soit supérieur à 30 % de ce qu'il était à la date de la révision précédente ou à la date d'entrée en vigueur de la présente convention s'il n'y a pas eu de révision antérieure. Les révisions ultérieures selon la procédure décrite au paragraphe 1 du présent article interviennent tous les cinq ans à partir de la fin de la cinquième année suivant la date de la révision intervenue en vertu du présent paragraphe.

Article 25 — Stipulation de limites

Un transporteur peut stipuler que le contrat de transport peut fixer des limites de responsabilité plus élevées que celles qui sont prévues dans la présente convention, ou ne comporter aucune limite de responsabilité.

Article 26 — Nullité des dispositions contractuelles

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.

Article 27 — Liberté de contracter

Rien dans la présente convention ne peut empêcher un transporteur de renoncer aux moyens de défense qui lui sont donnés en vertu de la présente convention, de refuser la conclusion d'un contrat de transport, ou d'établir des conditions qui ne sont pas en contradiction avec les dispositions de la présente convention.

Article 28 — Paiements anticipés

En cas d'accident d'aviation entraînant la mort ou la lésion de passagers, le transporteur, s'il y est tenu par la législation de son pays, versera sans retard des avances aux personnes physiques qui ont droit à un dédommagement pour leur permettre de subvenir à leurs besoins économiques immédiats. Ces avances ne constituent pas une reconnaissance de responsabilité et elles peuvent être déduites des montants versés ultérieurement par le transporteur à titre de dédommagement.

Article 29 — Principe des recours

Dans le transport de passagers, de bagages et de marchandises, toute action en dommages-intérêts, à quelque titre 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. Dans toute action de ce genre, on ne pourra pas obtenir de dommages-intérêts punitifs ou exemplaires ni de dommages à un titre autre que la réparation.

Article 30 — Préposés, mandataires — Montant total de la réparation

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

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

3. Sauf pour le transport de marchandises, les dispositions des paragraphes 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 ou du mandataire, fait soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résultera probablement.

Article 31 — Délais de protestation

1. La réception des bagages enregistrés et des marchandises sans protestation par le destinataire constituera présomption, sauf preuve du contraire, que les bagages et marchandises ont été livrés en bon état et conformément au titre de transport ou aux indications consignées par les autres moyens visés à l'article 3, paragraphe 2, et à l'article 4, paragraphe 2.

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 enregistrés 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 écrite et remise ou expédiée dans le délai prévu pour cette protestation.

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

Article 32 — Décès de la personne responsable

En cas de décès de la personne responsable, une action en responsabilité est recevable, conformément aux dispositions de la présente convention, à l'encontre de ceux qui représentent juridiquement sa succession.

Article 33 — Juridiction compétente

1. L'action en responsabilité devra être portée, au choix du demandeur, dans le territoire d'un des États Parties, 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. En ce qui concerne le dommage résultant de la mort ou d'une lésion corporelle subie par un passager, l'action en responsabilité peut être intentée devant l'un des tribunaux mentionnés au paragraphe 1 du présent article ou, eu égard aux spécificités du transport aérien, sur le territoire d'un État

partie où le passager a sa résidence principale et permanente au moment de l'accident et vers lequel ou à partir duquel le transporteur exploite des services de transport aérien, soit avec ses propres aéronefs, soit avec les aéronefs d'un autre transporteur en vertu d'un accord commercial, et dans lequel ce transporteur mène ses activités de transport aérien à partir de locaux que lui-même ou un autre transporteur avec lequel il a conclu un accord commercial loue ou possède.

3. Aux fins du paragraphe 2:

a) «accord commercial» signifie un accord autre qu'un accord d'agence conclu entre des transporteurs et portant sur la prestation de services communs de transport aérien de passagers;

b) «résidence principale et permanente» désigne le lieu unique de séjour fixe et permanent du passager au moment de l'accident. La nationalité du passager ne sera pas le facteur déterminant à cet égard.

4. La procédure sera régie selon le droit du tribunal saisi de l'affaire.

Article 34 — Arbitrage

1. Sous réserve des dispositions du présent article, les parties au contrat de transport de fret peuvent stipuler que tout différend relatif à la responsabilité du transporteur en vertu de la présente convention sera réglé par arbitrage. Cette entente sera consignée par écrit.

2. La procédure d'arbitrage se déroulera, au choix du demandeur, dans l'un des lieux de compétence des tribunaux prévus à l'article 33.

3. L'arbitre ou le tribunal arbitral appliquera les dispositions de la présente convention.

4. Les dispositions des paragraphes 2 et 3 du présent article seront réputées faire partie de toute clause ou de tout accord arbitral, et toute disposition contraire à telle clause ou à tel accord arbitral sera nulle et de nul effet.

Article 35 — Délai de recours

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 36 — Transporteurs successifs

1. Dans les cas de transport régis par la définition du paragraphe 3 de l'article 1, à exécuter par divers transporteurs successifs, chaque transporteur acceptant des voyageurs, des bagages ou des marchandises est soumis aux règles établies par la présente convention, et est censé être une des parties du contrat de transport, pour autant que ce contrat ait trait à la partie du transport effectuée sous son contrôle.

2. Au cas d'un tel transport, le passager 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, le passager ou l'expéditeur aura recours contre le premier transporteur, et le destinataire ou le passager 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 le passager, ou l'expéditeur ou le destinataire.

Article 37 — Droit de recours contre des tiers

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

Transport intermodal

Article 38 — Transport intermodal

1. Dans le cas de transport intermodal effectué en partie par air et en partie par tout autre moyen de transport, les dispositions de la présente convention ne s'appliquent, sous réserve du paragraphe 4 de l'article 18, qu'au transport aérien et si celui-ci répond aux conditions de l'article 1.

2. Rien dans la présente convention n'empêche les parties, dans le cas de transport intermodal, 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

Transport aérien effectué par une personne autre que le transporteur contractuel

Article 39 — Transporteur contractuel — Transporteur de fait

Les dispositions du présent chapitre s'appliquent lorsqu'une personne (ci-après dénommée «transporteur contractuel») conclut un contrat de transport régi par la présente convention avec un passager ou un expéditeur ou avec une personne agissant pour le compte du passager ou de l'expéditeur, et qu'une autre personne (ci-après dénommée «transporteur de fait») effectue, en vertu d'une autorisation donnée par le transporteur contractuel, tout ou partie du transport, mais n'est pas, en ce qui concerne cette partie, un transporteur successif au sens de la présente convention. Cette autorisation est présumée, sauf preuve contraire.

Article 40 — Responsabilité respective du transporteur contractuel et du transporteur de fait

Sauf disposition contraire du présent chapitre, si un transporteur de fait effectue tout ou partie du transport qui, conformément au contrat visé à l'article 39, est régi par la présente convention, le transporteur contractuel et le transporteur de fait sont soumis aux règles de la présente convention, le premier pour la totalité du transport envisagé dans le contrat, le second seulement pour le transport qu'il effectue.

Article 41 — Attribution mutuelle

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

2. Les actes et omissions du transporteur contractuel ou de ses préposés et mandataires agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur de fait. Toutefois, aucun de ces actes ou omissions ne pourra soumettre le transporteur de fait à une responsabilité dépassant les montants prévus aux articles 21, 22, 23 et 24. Aucun accord spécial aux termes duquel le transporteur contractuel assume des obligations que n'impose pas la présente convention, aucune renonciation à des droits ou moyens de défense prévus par la présente convention ou aucune déclaration spéciale d'intérêt à la livraison, visée à l'article 22 de la présente convention, n'auront d'effet à l'égard du transporteur de fait, sauf consentement de ce dernier.

Article 42 — Notification des ordres et protestations

Les instructions ou protestations à notifier au transporteur, en application de la présente convention, ont le même effet qu'elles soient adressées au transporteur contractuel ou au transporteur de fait. Toutefois, les instructions visées à l'article 12 n'ont d'effet que si elles sont adressées au transporteur contractuel.

Article 43 — Préposés et mandataires

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

Article 44 — Cumul de la réparation

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

Article 45 — Notification des actions en responsabilité

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

Article 46 — Juridiction annexe

Toute action en responsabilité, prévue à l'article 45, doit être portée, au choix du demandeur, sur le territoire d'un des États parties, soit devant l'un des tribunaux où une action peut être intentée contre le transporteur contractuel, conformément à l'article 33, soit devant le tribunal du domicile du transporteur de fait ou du siège principal de son exploitation.

Article 47 — Nullité des dispositions contractuelles

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

Article 48 — Rapports entre transporteur contractuel et transporteur de fait

Sous réserve de l'article 45, aucune disposition du présent chapitre ne peut être interprétée comme affectant les droits et obligations existant entre les transporteurs, y compris tous droits à un recours ou dédommagement.

Chapitre VI

Autres dispositions

Article 49 — Obligation d'application

Sont nulles et de nul effet 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.

Article 50 — Assurance

Les États parties exigent que leurs transporteurs contractent une assurance suffisante pour couvrir la responsabilité qui leur incombe aux termes de la présente convention. Un transporteur peut être tenu, par l'État partie à destination duquel il exploite des services, de fournir la preuve qu'il maintient une assurance suffisante couvrant sa responsabilité au titre de la présente convention.

Article 51 — Transport effectué dans des circonstances extraordinaires

Les dispositions des articles 3 à 5, 7 et 8 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 d'un transporteur.

Article 52 — Définition du terme «jour»

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

Chapitre VII

Dispositions protocolaires

Article 53 — Signature, ratification et entrée en vigueur

1. La présente convention est ouverte à Montréal le 28 mai 1999 à la signature des États participant à la Conférence internationale de droit aérien, tenue à Montréal du 10 au 28 mai 1999. Après le 28 mai 1999, la Convention sera ouverte à la signature de tous les États au siège de l'Organisation de l'aviation civile internationale à Montréal jusqu'à ce qu'elle entre en vigueur conformément au paragraphe 6 du présent article.

2. De même, la présente convention sera ouverte à la signature des organisations régionales d'intégration économique. Pour l'application de la présente convention, une «organisation régionale d'intégration économique» est une organisation constituée d'États souverains d'une région donnée qui a compétence sur certaines matières régies par la Convention et qui a été dûment autorisée à signer et à ratifier, accepter, approuver ou adhérer à la présente convention. Sauf au paragraphe 2 de l'article 1, au paragraphe 1, alinéa b), de l'article 3, à l'alinéa b) de l'article 5, aux articles 23, 33, 46 et à l'alinéa b) de l'article 57, toute mention faite d'un «État partie» ou «d'États parties» s'applique également aux organisations régionales d'intégration économique. Pour l'application de l'article 24, les mentions faites d'«une majorité des États parties» et d'«un tiers des États parties» ne s'appliquent pas aux organisations régionales d'intégration économique.

3. La présente convention est soumise à la ratification des États et des organisations d'intégration économique qui l'ont signée.

4. Tout État ou organisation régionale d'intégration économique qui ne signe pas la présente convention peut l'accepter, l'approuver ou y adhérer à tout moment.

5. Les instruments de ratification d'acceptation, d'approbation ou d'adhésion seront déposés auprès de l'Organisation de l'aviation civile internationale, qui est désignée par les présentes comme dépositaire.

6. La présente convention entrera en vigueur le soixantième jour après la date du dépôt auprès du dépositaire du trentième instrument de ratification, d'acceptation, d'approbation ou d'adhésion et entre les États qui ont déposé un tel instrument. Les instruments déposés par les organisations régionales d'intégration économique ne seront pas comptées aux fins du présent paragraphe.

7. Pour les autres États et pour les autres organisations régionales d'intégration économique, la présente convention prendra effet soixante jours après la date du dépôt d'un instrument de ratification, d'acceptation, d'approbation ou d'adhésion.

8. Le dépositaire notifiera rapidement à tous les signataires et à tous les États parties:

a) chaque signature de la présente convention ainsi que sa date;

b) chaque dépôt d'un instrument de ratification, d'acceptation, d'approbation ou d'adhésion ainsi que sa date;

c) la date d'entrée en vigueur de la présente convention;

d) la date d'entrée en vigueur de toute révision des limites de responsabilité établies en vertu de la présente convention;

e) toute dénonciation au titre de l'article 54.

Article 54 — Dénonciation

1. Tout État partie peut dénoncer la présente convention par notification écrite adressée au dépositaire.

2. La dénonciation prendra effet cent quatre-vingts jours après la date à laquelle le dépositaire aura reçu la notification.

Article 55 — Relation avec les autres instruments de la Convention de Varsovie

La présente convention l'emporte sur toutes règles s'appliquant au transport international par voie aérienne:

1) entre États parties à la présente convention du fait que ces États sont communément parties aux instruments suivants:

a) *Convention pour l'unification de certaines règles relatives au transport aérien international,* signée à Varsovie le 12 octobre 1929 (appelée ci-après la Convention de Varsovie);

b) *Protocole portant modification de la Convention pour l'unification de certaines règles relatives au transport aérien international signée à Varsovie le 12 octobre 1929,* fait à La Haye le 28 septembre 1955 (appelé ci-après le Protocole de La Haye);

c) *Convention complémentaire à la Convention de Varsovie, pour l'unification de certaines règles relatives au transport aérien international effectué par une personne autre que le transporteur contractuel,* signée à Guadalajara le 18 septembre 1961 (appelée ci-après la Convention de Guadalajara);

d) *Protocole portant modification de la Convention pour l'unification de certaines règles relatives au transport aérien international signée à Varsovie le 12 octobre 1929 amendée par le Protocole fait à La Haye le 28 septembre 1955,* signé à Guatemala le 8 mars 1971 (appelé ci-après le Protocole de Guatemala);

e) Protocoles additionnels n[os] 1 à 3 et Protocole de Montréal n[o] 4 portant modification de la Convention de Varsovie amendée par le Protocole de La Haye ou par la Convention de Varsovie amendée par le Protocole de La Haye et par le Protocole de Guatemala, signés à Montréal le 25 septembre 1975 (appelés ci-après les Protocoles de Montréal); ou

2) dans le territoire de tout État partie à la présente convention du fait que cet État est partie à un ou plusieurs des instruments mentionnés aux alinéas a) à e) ci-dessus.

Article 56 — États possédant plus d'un régime juridique

1. Si un État comprend deux unités territoriales ou davantage dans lesquelles des régimes juridiques différents s'appliquent aux questions régies par la présente convention, il peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que ladite convention s'applique à toutes ses unités territoriales ou seulement à l'une ou plusieurs d'entre elles et il peut à tout moment modifier cette déclaration en en soumettant une nouvelle.

2. Toute déclaration de ce genre est communiquée au dépositaire et indique expressément les unités territoriales auxquelles la Convention s'applique.

3. Dans le cas d'un État partie qui a fait une telle déclaration:

a) les références, à l'article 23, à la «monnaie nationale» sont interprétées comme signifiant la monnaie de l'unité territoriale pertinente dudit État;

b) à l'article 28, la référence à la «loi nationale» est interprétée comme se rapportant à la loi de l'unité territoriale pertinente dudit État.

Article 57 — Réserves

Aucune réserve ne peut être admise à la présente convention, si ce n'est qu'un État partie peut à tout moment déclarer, par notification adressée au dépositaire, que la présente convention ne s'applique pas:

a) aux transports aériens internationaux effectués et exploités directement par cet État à des fins non commerciales relativement à ses fonctions et devoirs d'État souverain;

b) au transport de personnes, de bagages et de marchandises effectué pour ses autorités militaires à bord d'aéronefs immatriculés dans ou loués par ledit État partie et dont la capacité entière a été réservée par ces autorités ou pour le compte de celles-ci.

EN FOI DE QUOI les plénipotentiaires soussignés, dûment autorisés, ont signé la présente convention.

FAIT à Montréal le 28[e] jour du mois de mai de l'an mil neuf cent quatre-vingt-dix-neuf dans les langues française, anglaise, arabe, chinoise, espagnole et russe, tous les textes faisant également foi. La présente convention restera déposée aux archives de l'Organisation de l'aviation civile internationale, et le dépositaire en transmettra des copies certifiées conformes à tous les États parties à la Convention de Varsovie, au Protocole de La Haye, à la Convention de Guadalajara, au Protocole de Guatemala et aux Protocoles de Montréal.

CONVENIO

PARA LA UNIFICACIÓN DE CIERTAS REGLAS PARA EL TRANSPORTE AÉREO INTERNACIONAL

LOS ESTADOS PARTES EN EL PRESENTE CONVENIO;

RECONOCIENDO la importante contribución del Convenio para la unificación de ciertas reglas relativas al transporte aéreo internacional, firmado en Varsovia el 12 de octubre de 1929, en adelante llamado "Convenio de Varsovia", y de otros instrumentos conexos para la armonización del derecho aeronáutico internacional privado;

RECONOCIENDO la necesidad de modernizar y refundir el Convenio de Varsovia y los instrumentos conexos;

RECONOCIENDO la importancia de asegurar la protección de los intereses de los usuarios del transporte aéreo internacional y la necesidad de una indemnización equitativa fundada en el principio de restitución;

REAFIRMANDO la conveniencia de un desarrollo ordenado de las operaciones de transporte aéreo internacional y de la circulación fluida de pasajeros, equipaje y carga conforme a los principios y objetivos del Convenio sobre Aviación Civil Internacional, hecho en Chicago el 7 de diciembre de 1944;

CONVENCIDOS de que la acción colectiva de los Estados para una mayor armonización y codificación de ciertas reglas que rigen el transporte aéreo internacional mediante un nuevo convenio es el medio más apropiado para lograr un equilibrio de intereses equitativo;

HAN CONVENIDO LO SIGUIENTE:

Capítulo I

Disposiciones generales

Artículo 1 — Ámbito de aplicación

1. El presente Convenio se aplica a todo transporte internacional de personas, equipaje o carga efectuado en aeronaves, a cambio de una remuneración. Se aplica igualmente al transporte gratuito efectuado en aeronaves por una empresa de transporte aéreo.

2. Para los fines del presente Convenio, la expresión *transporte internacional* significa todo transporte en que, conforme a lo estipulado por las partes, el punto de partida y el punto de destino, haya o no interrupción en el transporte o transbordo, están situados, bien en el territorio de dos Estados Partes, bien en el territorio de un solo Estado Parte si se ha previsto una escala en el territorio de cualquier otro Estado,

aunque éste no sea un Estado Parte. El transporte entre dos puntos dentro del territorio de un solo Estado Parte, sin una escala convenida en el territorio de otro Estado, no se considerará transporte internacional para los fines del presente Convenio.

3. El transporte que deban efectuar varios transportistas sucesivamente constituirá, para los fines del presente Convenio, un solo transporte cuando las partes lo hayan considerado como una sola operación, tanto si ha sido objeto de un solo contrato como de una serie de contratos, y no perderá su carácter internacional por el hecho de que un solo contrato o una serie de contratos deban ejecutarse íntegramente en el territorio del mismo Estado.

4. El presente Convenio se aplica también al transporte previsto en el Capítulo V, con sujeción a las condiciones establecidas en el mismo.

Artículo 2 — Transporte efectuado por el Estado y transporte de envíos postales

1. El presente Convenio se aplica al transporte efectuado por el Estado o las demás personas jurídicas de derecho público en las condiciones establecidas en el Artículo 1.

2. En el transporte de envíos postales, el transportista será responsable únicamente frente a la administración postal correspondiente, de conformidad con las normas aplicables a las relaciones entre los transportistas y las administraciones postales.

3. Salvo lo previsto en el párrafo 2 de este Artículo, las disposiciones del presente Convenio no se aplicarán al transporte de envíos postales.

Capítulo II

Documentación y obligaciones de las partes relativas al transporte de pasajeros, equipaje y carga

Artículo 3 — Pasajeros y equipaje

1. En el transporte de pasajeros se expedirá un documento de transporte, individual o colectivo, que contenga:

a) la indicación de los puntos de partida y destino;

b) si los puntos de partida y destino están situados en el territorio de un solo Estado Parte y se han previsto una o más escalas en el territorio de otro Estado, la indicación de por lo menos una de esas escalas.

2. Cualquier otro medio en que quede constancia de la información señalada en el párrafo 1 podrá sustituir a la expedición del documento mencionado en dicho párrafo. Si se utilizase uno de esos medios, el transportista ofrecerá al pasajero expedir una declaración escrita de la información conservada por esos medios.

3. El transportista entregará al pasajero un talón de identificación de equipaje por cada bulto de equipaje facturado.

4. Al pasajero se le entregará un aviso escrito indicando que cuando sea aplicable el presente Convenio, éste regirá la responsabilidad del transportista por muerte o lesiones, y por destrucción, pérdida o avería del equipaje, y por retraso.

5. El incumplimiento de las disposiciones de los párrafos precedentes no afectará a la existencia ni a la validez del contrato de transporte que, no obstante, quedará sujeto a las reglas del presente Convenio incluyendo las relativas a los límites de responsabilidad.

Artículo 4 — Carga

1. En el transporte de carga, se expedirá una carta de porte aéreo.

2. Cualquier otro medio en que quede constancia del transporte que deba efectuarse podrá sustituir a la expedición de la carta de porte aéreo. Si se utilizasen otros medios, el transportista entregará al expedidor, si así lo solicitara este último, un recibo de carga que permita la identificación del envío y el acceso a la información de la que quedó constancia conservada por esos medios.

Artículo 5 — Contenido de la carta de porte aéreo o del recibo de carga

La carta de porte aéreo o el recibo de carga deberán incluir:

a) la indicación de los puntos de partida y destino;

b) si los puntos de partida y destino están situados en el territorio de un solo Estado Parte y se han previsto una o más escalas en el territorio de otro Estado, la indicación de por lo menos una de esas escalas; y

c) la indicación del peso del envío.

Artículo 6 — Documento relativo a la naturaleza de la carga

Al expedidor podrá exigírsele, si es necesario para cumplir con las formalidades de aduanas, policía y otras autoridades públicas similares, que entregue un documento indicando la naturaleza de la carga. Esta disposición no crea para el transportista ningún deber, obligación ni responsabilidad resultantes de lo anterior.

Artículo 7 — Descripción de la carta de porte aéreo

1. La carta de porte aéreo la extenderá el expedidor en tres ejemplares originales.

2. El primer ejemplar llevará la indicación "para el transportista", y lo firmará el expedidor. El segundo ejemplar llevará la indicación "para el destinatario", y lo firmarán el expedidor y el transportista. El tercer ejemplar lo firmará el transportista, que lo entregará al expedidor, previa aceptación de la carga.

3. La firma del transportista y la del expedidor podrán ser impresas o remplazadas por un sello.

4. Si, a petición del expedidor, el transportista extiende la carta de porte aéreo, se considerará, salvo prueba en contrario, que el transportista ha actuado en nombre del expedidor.

Artículo 8 — Documentos para varios bultos

Cuando haya más de un bulto:

a) el transportista de la carga tendrá derecho a pedir al expedidor que extienda cartas de porte aéreo separadas;

b) el expedidor tendrá derecho a pedir al transportista que entregue recibos de carga separados cuando se utilicen los otros medios previstos en el párrafo 2 del Artículo 4.

Artículo 9 — Incumplimiento de los requisitos para los documentos

El incumplimiento de las disposiciones de los Artículos 4 a 8 no afectará a la existencia ni a la validez del contrato de transporte que, no obstante, quedará sujeto a las reglas del presente Convenio, incluso las relativas a los límites de responsabilidad.

Artículo 10 — Responsabilidad por las indicaciones inscritas en los documentos

1. El expedidor es responsable de la exactitud de las indicaciones y declaraciones concernientes a la carga inscritas por él o en su nombre en la carta de porte aéreo, o hechas por él o en su nombre al transportista para que se inscriban en el recibo de carga o para que se incluyan en la constancia conservada por los otros medios mencionados en el párrafo 2 del Artículo 4. Lo anterior se aplicará también cuando la persona que actúa en nombre del expedidor es también dependiente del transportista.

2. El expedidor indemnizará al transportista de todo daño que haya sufrido éste, o cualquier otra persona con respecto a la cual el transportista sea responsable, como consecuencia de las indicaciones y declaraciones irregulares, inexactas o incompletas hechas por él o en su nombre.

3. Con sujeción a las disposiciones de los párrafos 1 y 2 de este Artículo, el transportista deberá indemnizar al expedidor de todo daño que haya sufrido éste, o cualquier otra persona con respecto a la cual el expedidor sea responsable, como consecuencia de las indicaciones y declaraciones irregulares, inexactas o incompletas inscritas por el transportista o en su nombre en el recibo de carga o en la constancia conservada por los otros medios mencionados en el párrafo 2 del Artículo 4.

Artículo 11 — Valor probatorio de los documentos

1. Tanto la carta de porte aéreo como el recibo de carga constituyen presunción, salvo prueba en contrario, de la celebración del contrato, de la aceptación de la carga y de las condiciones de transporte que contengan.

2. Las declaraciones de la carta de porte aéreo o del recibo de carga relativas al peso, las dimensiones y el embalaje de la carga, así como al número de bultos constituyen presunción, salvo prueba en contrario, de los hechos declarados; las indicaciones relativas a la cantidad, el volumen y el estado de la carga no constituyen prueba contra el transportista, salvo cuando éste las haya comprobado en presencia del

expedidor y se hayan hecho constar en la carta de porte aéreo o el recibo de carga, o que se trate de indicaciones relativas al estado aparente de la carga.

Artículo 12 — Derecho de disposición de la carga

1. El expedidor tiene derecho, a condición de cumplir con todas las obligaciones resultantes del contrato de transporte, a disponer de la carga retirándola del aeropuerto de salida o de destino, o deteniéndola en el curso del viaje en caso de aterrizaje, o haciéndola entregar en el lugar de destino o en el curso del viaje a una persona distinta del destinatario originalmente designado, o pidiendo que sea devuelta al aeropuerto de partida. El expedidor no ejercerá este derecho de disposición de forma que perjudique al transportista ni a otros expedidores y deberá rembolsar todos los gastos ocasionados por el ejercicio de este derecho.

2. En caso de que sea imposible ejecutar las instrucciones del expedidor, el transportista deberá avisarle inmediatamente.

3. Si el transportista cumple las instrucciones del expedidor respecto a la disposición de la carga sin exigir la presentación del ejemplar de la carta de porte aéreo o del recibo de carga entregado a este último será responsable, sin perjuicio de su derecho a resarcirse del expedidor, del daño que se pudiera causar por este hecho a quien se encuentre legalmente en posesión de ese ejemplar de la carta de porte aéreo o del recibo de carga.

4. El derecho del expedidor cesa en el momento en que comienza el del destinatario, conforme al Artículo 13. Sin embargo, si el destinatario rehúsa aceptar la carga o si no es hallado, el expedidor recobrará su derecho de disposición.

Artículo 13 — Entrega de la carga

1. Salvo cuando el expedidor haya ejercido su derecho en virtud del Artículo 12, el destinatario tendrá derecho, desde la llegada de la carga al lugar de destino, a pedir al transportista que le entregue la carga a cambio del pago del importe que corresponda y del cumplimiento de las condiciones de transporte.

2. Salvo estipulación en contrario, el transportista debe avisar al destinatario de la llegada de la carga, tan pronto como ésta llegue.

3. Si el transportista admite la pérdida de la carga, o si la carga no ha llegado a la expiración de los siete días siguientes a la fecha en que debería haber llegado, el destinatario podrá hacer valer contra el transportista los derechos que surgen del contrato de transporte.

Artículo 14 — Ejecución de los derechos del expedidor y del destinatario

El expedidor y el destinatario podrán hacer valer, respectivamente, todos los derechos que les conceden los Artículos 12 y 13, cada uno en su propio nombre, sea en su propio interés, sea en el interés de un tercero, a condición de cumplir las obligaciones que el contrato de transporte impone.

Artículo 15 — Relaciones entre el expedidor y el destinatario y relaciones entre terceros

1. Los Artículos 12, 13 y 14 no afectan a las relaciones del expedidor y del destinatario entre sí, ni a las relaciones entre terceros cuyos derechos provienen del expedidor o del destinatario.

2. Las disposiciones de los Artículos 12, 13 y 14 sólo podrán modificarse mediante una cláusula explícita consignada en la carta de porte aéreo o en el recibo de carga.

Artículo 16 — Formalidades de aduanas, policía u otras autoridades públicas

1. El expedidor debe proporcionar la información y los documentos que sean necesarios para cumplir con las formalidades de aduanas, policía y cualquier otra autoridad pública antes de la entrega de la carga al destinatario. El expedidor es responsable ante el transportista de todos los daños que pudieran resultar de la falta, insuficiencia o irregularidad de dicha información o de los documentos, salvo que ello se deba a la culpa del transportista, sus dependientes o agentes.

2. El transportista no está obligado a examinar si dicha información o los documentos son exactos o suficientes.

Capítulo III

Responsabilidad del transportista y medida de la indemnización del daño

Artículo 17 — Muerte y lesiones de los pasajeros — Daño del equipaje

1. El transportista es responsable del daño causado en caso de muerte o de lesión corporal de un pasajero por la sola razón de que el accidente que causó la muerte o lesión se haya producido a bordo de la aeronave o durante cualquiera de las operaciones de embarque o desembarque.

2. El transportista es responsable del daño causado en caso de destrucción, pérdida o avería del equipaje facturado por la sola razón de que el hecho que causó la destrucción, pérdida o avería se haya producido a bordo de la aeronave o durante cualquier período en que el equipaje facturado se hallase bajo la custodia del transportista. Sin embargo, el transportista no será responsable en la medida en que el daño se deba a la naturaleza, a un defecto o a un vicio propios del equipaje. En el caso de equipaje no facturado, incluyendo los objetos personales, el transportista es responsable si el daño se debe a su culpa o a la de sus dependientes o agentes.

3. Si el transportista admite la pérdida del equipaje facturado, o si el equipaje facturado no ha llegado a la expiración de los veintiún días siguientes a la fecha en que debería haber llegado, el pasajero podrá hacer valer contra el transportista los derechos que surgen del contrato de transporte.

4. A menos que se indique otra cosa, en el presente Convenio el término "equipaje" significa tanto el equipaje facturado como el equipaje no facturado.

Artículo 18 — Daño de la carga

1. El transportista es responsable del daño causado en caso de destrucción o pérdida o avería de la carga, por la sola razón de que el hecho que causó el daño se haya producido durante el transporte aéreo.

2. Sin embargo, el transportista no será responsable en la medida en que pruebe que la destrucción o pérdida o avería de la carga se debe a uno o más de los hechos siguientes:

a) la naturaleza de la carga, o un defecto o un vicio propios de la misma;

b) el embalaje defectuoso de la carga, realizado por una persona que no sea el transportista o alguno de sus dependientes o agentes;

c) un acto de guerra o un conflicto armado;

d) un acto de la autoridad pública ejecutado en relación con la entrada, la salida o el tránsito de la carga.

3. El transporte aéreo, en el sentido del párrafo 1 de este Artículo, comprende el período durante el cual la carga se halla bajo la custodia del transportista.

4. El período del transporte aéreo no comprende ningún transporte terrestre, marítimo ni por aguas interiores efectuado fuera de un aeropuerto. Sin embargo, cuando dicho transporte se efectúe durante la ejecución de un contrato de transporte aéreo, para fines de carga, entrega o transbordo, todo daño se presumirá, salvo prueba en contrario, como resultante de un hecho ocurrido durante el transporte aéreo. Cuando un transportista, sin el consentimiento del expedidor, remplace total o parcialmente el transporte previsto en el acuerdo entre las partes como transporte aéreo por otro modo de transporte, el transporte efectuado por otro modo se considerará comprendido en el período de transporte aéreo.

Artículo 19 — Retraso

El transportista es responsable del daño ocasionado por retrasos en el transporte aéreo de pasajeros, equipaje o carga. Sin embargo, el transportista no será responsable del daño ocasionado por retraso si prueba que él y sus dependientes y agentes adoptaron todas las medidas que eran razonablemente necesarias para evitar el daño o que les fue imposible, a uno y a otros, adoptar dichas medidas.

Artículo 20 — Exoneración

Si el transportista prueba que la negligencia u otra acción u omisión indebida de la persona que pide indemnización, o de la persona de la que proviene su derecho, causó el daño o contribuyó a él, el transportista quedará exonerado, total o parcialmente, de su responsabilidad con respecto al reclamante, en la medida en que esta negligencia u otra acción u omisión indebida haya causado el daño o contribuido a él. Cuando pida indemnización una persona que no sea el pasajero, en razón de la muerte o lesión de este último, el transportista quedará igualmente exonerado de su responsabilidad, total o parcialmente, en la medida en que pruebe que la negligencia u otra acción u omisión indebida del pasajero causó el daño o contribuyó a él. Este Artículo se aplica a todas las disposiciones sobre responsabilidad del presente Convenio, incluso al párrafo 1 del Artículo 21.

Artículo 21 — Indemnización en caso de muerte o lesiones de los pasajeros

1. Respecto al daño previsto en el párrafo 1 del Artículo 17 que no exceda de 100 000 derechos especiales de giro por pasajero, el transportista no podrá excluir ni limitar su responsabilidad.

2. El transportista no será responsable del daño previsto en el párrafo 1 del Artículo 17 en la medida que exceda de 100 000 derechos especiales de giro por pasajero, si prueba que:

a) el daño no se debió a la negligencia o a otra acción u omisión indebida del transportista o sus dependientes o agentes; o

b) el daño se debió únicamente a la negligencia o a otra acción u omisión indebida de un tercero.

Artículo 22 — Límites de responsabilidad respecto al retraso, el equipaje y la carga

1. En caso de daño causado por retraso, como se especifica en el Artículo 19, en el transporte de personas la responsabilidad del transportista se limita a 4 150 derechos especiales de giro por pasajero.

2. En el transporte de equipaje, la responsabilidad del transportista en caso de destrucción, pérdida, avería o retraso se limita a 1 000 derechos especiales de giro por pasajero a menos que el pasajero haya hecho al transportista, al entregarle el equipaje facturado, una declaración especial del valor de la entrega de éste en el lugar de destino, y haya pagado una suma suplementaria, si hay lugar a ello. En este caso, el transportista estará obligado a pagar una suma que no excederá del importe de la suma declarada, a menos que pruebe que este importe es superior al valor real de la entrega en el lugar de destino para el pasajero.

3. En el transporte de carga, la responsabilidad del transportista en caso de destrucción, pérdida, avería o retraso se limita a una suma de 17 derechos especiales de giro por kilogramo, a menos que el expedidor haya hecho al transportista, al entregarle el bulto, una declaración especial del valor de la entrega de éste en el lugar de destino, y haya pagado una suma suplementaria, si hay lugar a ello. En este caso, el transportista estará obligado a pagar una suma que no excederá del importe de la suma declarada, a menos que pruebe que este importe es superior al valor real de la entrega en el lugar de destino para el expedidor.

4. En caso de destrucción, pérdida, avería o retraso de una parte de la carga o de cualquier objeto que ella contenga, para determinar la suma que constituye el límite de responsabilidad del transportista solamente se tendrá en cuenta el peso total del bulto o de los bultos afectados. Sin embargo, cuando la destrucción, pérdida, avería o retraso de una parte de la carga o de un objeto que ella contiene afecte al valor de otros bultos comprendidos en la misma carta de porte aéreo, o en el mismo recibo o, si no se hubiera expedido ninguno de estos documentos, en la misma constancia conservada por los otros medios mencionados en el párrafo 2 del Artículo 4, para determinar el límite de responsabilidad también se tendrá en cuenta el peso total de tales bultos.

5. Las disposiciones de los párrafos 1 y 2 de este Artículo no se aplicarán si se prueba que el daño es el resultado de una acción u omisión del transportista o de sus dependientes o agentes, con intención de causar daño, o con temeridad y sabiendo que probablemente causaría daño; siempre que, en el caso de una acción u omisión de un dependiente o agente, se pruebe también que éste actuaba en el ejercicio de sus funciones.

6. Los límites prescritos en el Artículo 21 y en este Artículo no obstarán para que el tribunal acuerde además, de conformidad con su propia ley, una suma que corresponda a todo o parte de las costas y otros gastos de litigio en que haya incurrido el demandante, inclusive intereses. La disposición anterior no regirá

cuando el importe de la indemnización acordada, con exclusión de las costas y otros gastos de litigio, no exceda de la suma que el transportista haya ofrecido por escrito al demandante dentro de un período de seis meses contados a partir del hecho que causó el daño, o antes de comenzar el juicio, si la segunda fecha es posterior.

Artículo 23 — Conversión de las unidades monetarias

1. Se considerará que las sumas expresadas en derechos especiales de giro mencionadas en el presente Convenio se refieren al derecho especial de giro definido por el Fondo Monetario Internacional. La conversión de las sumas en las monedas nacionales, en el caso de procedimientos judiciales, se hará conforme al valor de dichas monedas en derechos especiales de giro en la fecha de la sentencia. El valor, en derechos especiales de giro, de la moneda nacional de un Estado Parte que sea miembro del Fondo Monetario Internacional se calculará conforme al método de valoración aplicado por el Fondo Monetario Internacional para sus operaciones y transacciones, vigente en la fecha de la sentencia. El valor, en derechos especiales de giro, de la moneda nacional de un Estado Parte que no sea miembro del Fondo Monetario Internacional se calculará de la forma determinada por dicho Estado.

2. Sin embargo, los Estados que no sean miembros del Fondo Monetario Internacional y cuya legislación no permita aplicar las disposiciones del párrafo 1 de este Artículo podrán declarar, en el momento de la ratificación o de la adhesión o ulteriormente, que el límite de responsabilidad del transportista prescrito en el Artículo 21 se fija en la suma de 1 500 000 unidades monetarias por pasajero en los procedimientos judiciales seguidos en sus territorios; 62 500 unidades monetarias por pasajero, con respecto al párrafo 1 del Artículo 22; 15 000 unidades monetarias por pasajero, con respecto al párrafo 2 del Artículo 22; y 250 unidades monetarias por kilogramo, con respecto al párrafo 3 del Artículo 22. Esta unidad monetaria corresponde a sesenta y cinco miligramos y medio de oro con ley de novecientas milésimas. Estas sumas podrán convertirse en la moneda nacional de que se trate en cifras redondas. La conversión de estas sumas en moneda nacional se efectuará conforme a la ley del Estado interesado.

3. El cálculo mencionado en la última oración del párrafo 1 de este Artículo y el método de conversión mencionado en el párrafo 2 de este Artículo se harán de forma tal que expresen en la moneda nacional del Estado Parte, en la medida posible, el mismo valor real para las sumas de los Artículos 21 y 22 que el que resultaría de la aplicación de las tres primeras oraciones del párrafo 1 de este Artículo. Los Estados Partes comunicarán al Depositario el método para hacer el cálculo con arreglo al párrafo 1 de este Artículo o los resultados de la conversión del párrafo 2 de este Artículo, según sea el caso, al depositar un instrumento de ratificación, aceptación o aprobación del presente Convenio o de adhesión al mismo y cada vez que haya un cambio respecto a dicho método o a esos resultados.

Artículo 24 — Revisión de los límites

1. Sin que ello afecte a las disposiciones del Artículo 25 del presente Convenio, y con sujeción al párrafo 2 que sigue, los límites de responsabilidad prescritos en los Artículos 21, 22 y 23 serán revisados por el Depositario cada cinco años, debiendo efectuarse la primera revisión al final del quinto año siguiente a la fecha de entrada en vigor del presente Convenio o, si el Convenio no entra en vigor dentro de los cinco años siguientes a la fecha en que se abrió a la firma, dentro del primer año de su entrada en vigor, con relación a un índice de inflación que corresponda a la tasa de inflación acumulada desde la revisión anterior o, la primera vez, desde la fecha de entrada en vigor del Convenio. La medida de la tasa de inflación que habrá de utilizarse para determinar el índice de inflación será el promedio ponderado de las tasas anuales de aumento o de disminución del índice de precios al consumidor de los Estados cuyas monedas comprenden el derecho especial de giro mencionado en el párrafo 1 del Artículo 23.

2. Si de la revisión mencionada en el párrafo anterior resulta que el índice de inflación ha sido superior al diez por ciento, el Depositario notificará a los Estados Partes la revisión de los límites de responsabilidad. Dichas revisiones serán efectivas seis meses después de su notificación a los Estados Partes. Si dentro de los tres meses siguientes a su notificación a los Estados Partes una mayoría de los Estados Partes registra su desaprobación, la revisión no tendrá efecto y el Depositario remitirá la cuestión a una reunión de los Estados Partes. El Depositario notificará inmediatamente a todos los Estados Partes la entrada en vigor de toda revisión.

3. No obstante el párrafo 1 de este Artículo, el procedimiento mencionado en el párrafo 2 de este Artículo se aplicará en cualquier momento, siempre que un tercio de los Estados Partes expresen el deseo de hacerlo y con la condición de que el índice de inflación mencionado en el párrafo 1 haya sido superior al treinta por ciento desde la revisión anterior o desde la fecha de la entrada en vigor del presente Convenio si no ha habido una revisión anterior. Las revisiones subsiguientes efectuadas empleando el procedimiento descrito en el párrafo 1 de este Artículo se realizarán cada cinco años, contados a partir del final del quinto año siguiente a la fecha de la revisión efectuada en virtud de este párrafo.

Artículo 25 — Estipulación sobre los límites

El transportista podrá estipular que el contrato de transporte estará sujeto a límites de responsabilidad más elevados que los previstos en el presente Convenio, o que no estará sujeto a ningún límite de responsabilidad.

Artículo 26 — Nulidad de las cláusulas contractuales

Toda cláusula que tienda a exonerar al transportista de su responsabilidad o a fijar un límite inferior al establecido en el presente Convenio será nula y de ningún efecto, pero la nulidad de dicha cláusula no implica la nulidad del contrato, que continuará sujeto a las disposiciones del presente Convenio.

Artículo 27 — Libertad contractual

Ninguna de las disposiciones del presente Convenio impedirá al transportista negarse a concertar un contrato de transporte, renunciar a las defensas que pueda invocar en virtud del presente Convenio, o establecer condiciones que no estén en contradicción con las disposiciones del presente Convenio.

Artículo 28 — Pagos adelantados

En caso de accidentes de aviación que resulten en la muerte o lesiones de los pasajeros, el transportista hará, si lo exige su ley nacional, pagos adelantados sin demora, a la persona o personas físicas que tengan derecho a reclamar indemnización a fin de satisfacer sus necesidades económicas inmediatas. Dichos pagos adelantados no constituirán un reconocimiento de responsabilidad y podrán ser deducidos de toda cantidad posteriormente pagada como indemnización por el transportista.

Artículo 29 — Fundamento de las reclamaciones

1. En el transporte de pasajeros, de equipaje y de carga, toda acción de indemnización de daños, sea que se funde en el presente Convenio, en un contrato o en un acto ilícito, sea en cualquier otra causa, solamente podrá iniciarse con sujeción a condiciones y a límites de responsabilidad como los previstos en

el presente Convenio, sin que ello afecte a la cuestión de qué personas pueden iniciar las acciones y cuáles son sus respectivos derechos. En ninguna de dichas acciones se otorgará una indemnización punitiva, ejemplar o de cualquier naturaleza que no sea compensatoria.

Artículo 30 — Dependientes, agentes — Total de las reclamaciones

1. Si se inicia una acción contra un dependiente del transportista, por daños a que se refiere el presente Convenio, dicho dependiente o agente, si prueban que actuaban en el ejercicio de sus funciones, podrán ampararse en las condiciones y los límites de responsabilidad que puede invocar el transportista en virtud del presente Convenio.

2. El total de las sumas resarcibles del transportista, sus dependientes y agentes, en este caso, no excederá de dichos límites.

3. Salvo por lo que respecta al transporte de carga, las disposiciones de los párrafos 1 y 2 de este Artículo no se aplicarán si se prueba que el daño es el resultado de una acción u omisión del dependiente, con intención de causar daño, o con temeridad y sabiendo que probablemente causaría daño.

Artículo 31 — Aviso de protesta oportuno

1. El recibo del equipaje facturado o la carga sin protesta por parte del destinatario constituirá presunción, salvo prueba en contrario, de que los mismos han sido entregados en buen estado y de conformidad con el documento de transporte o la constancia conservada por los otros medios mencionados en el párrafo 2 del Artículo 3 y en el párrafo 2 del Artículo 4.

2. En caso de avería, el destinatario deberá presentar al transportista una protesta inmediatamente después de haber sido notada dicha avería y, a más tardar, dentro de un plazo de siete días para el equipaje facturado y de catorce días para la carga, a partir de la fecha de su recibo. En caso de retraso, la protesta deberá hacerla a más tardar dentro de veintiún días, a partir de la fecha en que el equipaje o la carga hayan sido puestos a su disposición.

3. Toda protesta deberá hacerse por escrito y darse o expedirse dentro de los plazos mencionados.

4. A falta de protesta dentro de los plazos establecidos, todas las acciones contra el transportista serán inadmisibles, salvo en el caso de fraude de su parte.

Artículo 32 — Fallecimiento de la persona responsable

En caso de fallecimiento de la persona responsable, la acción de indemnización de daños se ejercerá, dentro de los límites previstos en el presente Convenio, contra los causahabientes de su sucesión.

Artículo 33 — Jurisdicción

1. Una acción de indemnización de daños deberá iniciarse, a elección del demandante, en el territorio de uno de los Estados Partes, sea ante el tribunal del domicilio del transportista, o de su oficina principal, o del lugar en que tiene una oficina por cuyo conducto se ha celebrado el contrato, sea ante el tribunal del lugar de destino.

2. Con respecto al daño resultante de la muerte o lesiones del pasajero, una acción podrá iniciarse ante uno de los tribunales mencionados en el párrafo 1 de este Artículo, o en el territorio de un Estado Parte en que el pasajero tiene su residencia principal y permanente en el momento del accidente y hacia y desde el cual el transportista explota servicios de transporte aéreo de pasajeros en sus propias aeronaves o en las de otro transportista con arreglo a un acuerdo comercial, y en que el transportista realiza sus actividades de transporte aéreo de pasajeros desde locales arrendados o que son de su propiedad o de otro transportista con el que tiene un acuerdo comercial.

3. Para los fines del párrafo 2,

a) "acuerdo comercial" significa un acuerdo, que no es un contrato de agencia, hecho entre transportistas y relativo a la provisión de sus servicios conjuntos de transporte aéreo de pasajeros;

b) "residencia principal y permanente" significa la morada fija y permanente del pasajero en el momento del accidente. La nacionalidad del pasajero no será el factor determinante al respecto.

4. Las cuestiones de procedimiento se regirán por la ley del tribunal que conoce el caso.

Artículo 34 — Arbitraje

1. Con sujeción a lo previsto en este Artículo, las partes en el contrato de transporte de carga pueden estipular que toda controversia relativa a la responsabilidad del transportista prevista en el presente Convenio se resolverá por arbitraje. Dicho acuerdo se hará por escrito.

2. El procedimiento de arbitraje se llevará a cabo, a elección del reclamante, en una de las jurisdicciones mencionadas en el Artículo 33.

3. El árbitro o el tribunal arbitral aplicarán las disposiciones del presente Convenio.

4. Las disposiciones de los párrafos 2 y 3 de este Artículo se considerarán parte de toda cláusula o acuerdo de arbitraje, y toda condición de dicha cláusula o acuerdo que sea incompatible con dichas disposiciones será nula y de ningún efecto.

Artículo 35 — Plazo para las acciones

1. El derecho a indemnización se extinguirá si no se inicia una acción dentro del plazo de dos años, contados a partir de la fecha de llegada a destino o la del día en que la aeronave debería haber llegado o la de la detención del transporte.

2. La forma de calcular ese plazo se determinará por la ley del tribunal que conoce el caso.

Artículo 36 — Transporte sucesivo

1. En el caso del transporte que deban efectuar varios transportistas sucesivamente y que esté comprendido en la definición del párrafo 3 del Artículo 1, cada transportista que acepte pasajeros, equipaje o carga se someterá a las reglas establecidas en el presente Convenio y será considerado como una de las partes del contrato de transporte en la medida en que el contrato se refiera a la parte del transporte efectuado bajo su supervisión.

2. En el caso de un transporte de esa naturaleza, el pasajero, o cualquier persona que tenga derecho a una indemnización por él, sólo podrá proceder contra el transportista que haya efectuado el transporte durante el cual se produjo el accidente o el retraso, salvo en el caso en que, por estipulación expresa, el primer transportista haya asumido la responsabilidad por todo el viaje.

3. Si se trata de equipaje o carga, el pasajero o el expedidor tendrán derecho de acción contra el primer transportista, y el pasajero o el destinatario que tengan derecho a la entrega tendrán derecho de acción contra el último transportista, y uno y otro podrán, además, proceder contra el transportista que haya efectuado el transporte durante el cual se produjo la destrucción, pérdida, avería o retraso. Dichos transportistas serán solidariamente responsables ante el pasajero o ante el expedidor o el destinatario.

Artículo 37 — Derecho de acción contra terceros

Ninguna de las disposiciones del presente Convenio afecta a la cuestión de si la persona responsable de daños de conformidad con el mismo tiene o no derecho de acción regresiva contra alguna otra persona.

Capítulo IV

Transporte combinado

Artículo 38 — Transporte combinado

1. En el caso de transporte combinado efectuado en parte por aire y en parte por cualquier otro medio de transporte, las disposiciones del presente Convenio se aplicarán únicamente al transporte aéreo, con sujeción al párrafo 4 del Artículo 18, siempre que el transporte aéreo responda a las condiciones del Artículo 1.

2. Ninguna de las disposiciones del presente Convenio impedirá a las partes, en el caso de transporte combinado, insertar en el documento de transporte aéreo condiciones relativas a otros medios de transporte, siempre que las disposiciones del presente Convenio se respeten en lo que concierne al transporte aéreo.

Capítulo V

Transporte aéreo efectuado por una persona distinta del transportista contractual

Artículo 39 — Transportista contractual — Transportista de hecho

Las disposiciones de este Capítulo se aplican cuando una persona (en adelante el "transportista contractual") celebra como parte un contrato de transporte regido por el presente Convenio con el pasajero o con el expedidor, o con la persona que actúe en nombre de uno u otro, y otra persona (en adelante el "transportista de hecho") realiza, en virtud de autorización dada por el transportista contractual, todo o parte del transporte, pero sin ser con respecto a dicha parte del transporte un transportista sucesivo en el sentido del presente Convenio. Dicha autorización se presumirá, salvo prueba en contrario.

Artículo 40 — Responsabilidades respectivas del transportista contractual y del transportista de hecho

Si un transportista de hecho realiza todo o parte de un transporte que, conforme al contrato a que se refiere el Artículo 39, se rige por el presente Convenio, tanto el transportista contractual como el transportista de hecho quedarán sujetos, excepto lo previsto en este Capítulo, a las disposiciones del presente Convenio, el primero con respecto a todo el transporte previsto en el contrato, el segundo solamente con respecto al transporte que realiza.

Artículo 41 — Responsabilidad mutua

1. Las acciones y omisiones del transportista de hecho y de sus dependientes y agentes, cuando éstos actúen en el ejercicio de sus funciones, se considerarán también, con relación al transporte realizado por el transportista de hecho, como acciones y omisiones del transportista contractual.

2. Las acciones y omisiones del transportista contractual y de sus dependientes y agentes, cuando éstos actúen en el ejercicio de sus funciones, se considerarán también, con relación al transporte realizado por el transportista de hecho, como del transportista de hecho. Sin embargo, ninguna de esas acciones u omisiones someterá al transportista de hecho a una responsabilidad que exceda de las cantidades previstas en los Artículos 21, 22, 23 y 24. Ningún acuerdo especial por el cual el transportista contractual asuma obligaciones no impuestas por el presente Convenio, ninguna renuncia de derechos o defensas establecidos por el Convenio y ninguna declaración especial de valor prevista en el Artículo 21 afectarán al transportista de hecho, a menos que éste lo acepte.

Artículo 42 — Destinatario de las protestas e instrucciones

Las protestas e instrucciones que deban dirigirse al transportista en virtud del presente Convenio tendrán el mismo efecto, sean dirigidas al transportista contractual, sean dirigidas al transportista de hecho. Sin embargo, las instrucciones mencionadas en el Artículo 12 sólo surtirán efecto si son dirigidas al transportista contractual.

Artículo 43 — Dependientes y agentes

Por lo que respecta al transporte realizado por el transportista de hecho, todo dependiente o agente de éste o del transportista contractual tendrán derecho, si prueban que actuaban en el ejercicio de sus funciones, a invocar las condiciones y los límites de responsabilidad aplicables en virtud del presente Convenio al transportista del cual son dependiente o agente, a menos que se pruebe que habían actuado de forma que no puedan invocarse los límites de responsabilidad de conformidad con el presente Convenio.

Artículo 44 — Total de la indemnización

Por lo que respecta al transporte realizado por el transportista de hecho, el total de las sumas resarcibles de este transportista y del transportista contractual, y de los dependientes y agentes de uno y otro que hayan actuado en el ejercicio de sus funciones, no excederá de la cantidad mayor que pueda obtenerse de cualquiera de dichos transportistas en virtud del presente Convenio, pero ninguna de las personas mencionadas será responsable por una suma más elevada que los límites aplicables a esa persona.

Artículo 45 — Destinatario de las reclamaciones

Por lo que respecta al transporte realizado por el transportista de hecho, la acción de indemnización de daños podrá iniciarse, a elección del demandante, contra dicho transportista o contra el transportista contractual o contra ambos, conjunta o separadamente. Si se ejerce la acción únicamente contra uno de estos transportistas, éste tendrá derecho a traer al juicio al otro transportista, rigiéndose el procedimiento y sus efectos por la ley del tribunal que conoce el caso.

Artículo 46 — Jurisdicción adicional

Toda acción de indemnización de daños prevista en el Artículo 45 deberá iniciarse, a elección del demandante, en el territorio de uno de los Estados Partes ante uno de los tribunales en que pueda entablarse una acción contra el transportista contractual, conforme a lo previsto en el Artículo 33, o ante el tribunal en cuya jurisdicción el transportista de hecho tiene su domicilio o su oficina principal.

Artículo 47 — Nulidad de las cláusulas contractuales

Toda cláusula que tienda a exonerar al transportista contractual o al transportista de hecho de la responsabilidad prevista en este Capítulo o a fijar un límite inferior al aplicable conforme a este Capítulo será nula y de ningún efecto, pero la nulidad de dicha cláusula no implica la nulidad del contrato, que continuará sujeto a las disposiciones de este Capítulo.

Artículo 48 — Relaciones entre el transportista contractual y el transportista de hecho

Excepto lo previsto en el Artículo 45, ninguna de las disposiciones de este Capítulo afectará a los derechos y obligaciones entre los transportistas, incluido todo derecho de acción regresiva o de indemnización.

Capítulo VI

Otras disposiciones

Artículo 49 — Aplicación obligatoria

Toda cláusula del contrato de transporte y todos los acuerdos particulares concertados antes de que ocurra el daño, por los cuales las partes traten de eludir la aplicación de las reglas establecidas en el presente Convenio, sea decidiendo la ley que habrá de aplicarse, sea modificando las reglas relativas a la jurisdicción, serán nulos y de ningún efecto.

Artículo 50 — Seguro

Los Estados Partes exigirán a sus transportistas que mantengan un seguro adecuado que cubra su responsabilidad en virtud del presente Convenio. El Estado Parte hacia el cual el transportista explota

servicios podrá exigirle a éste que presente pruebas de que mantiene un seguro adecuado, que cubre su responsabilidad en virtud del presente Convenio.

Artículo 51 — Transporte efectuado en circunstancias extraordinarias

Las disposiciones de los Artículos 3 a 5, 7 y 8 relativas a la documentación del transporte, no se aplicarán en el caso de transportes efectuados en circunstancias extraordinarias que excedan del alcance normal de las actividades del transportista.

Artículo 52 — Definición de días

Cuando en el presente Convenio se emplea el término "días", se trata de días del calendario y no de días de trabajo.

Capítulo VII

Cláusulas finales

Artículo 53 — Firma, ratificación y entrada en vigor

1. El presente Convenio estará abierto en Montreal, el 28 de mayo de 1999, a la firma de los Estados participantes en la Conferencia internacional de derecho aeronáutico, celebrada en Montreal del 10 al 28 de mayo de 1999. Después del 28 de mayo de 1999, el Convenio estará abierto a la firma de todos los Estados en la Sede de la Organización de Aviación Civil Internacional, en Montreal, hasta su entrada en vigor de conformidad con el párrafo 6 de este Artículo.

2. El presente Convenio estará igualmente abierto a la firma de organizaciones regionales de integración económica. Para los fines del presente Convenio, "organización regional de integración económica" significa cualquier organización constituida por Estados soberanos de una región determinada, que tenga competencia con respecto a determinados àsuntos regidos por el Convenio y haya sido debidamente autorizada a firmar y a ratificar, aceptar, aprobar o adherirse al presente Convenio. La referencia a "Estado Parte" o "Estados Partes" en el presente Convenio, con excepción del párrafo 2 del Artículo 1, el apartado b) del párrafo 1 del Artículo 3, el apartado b) del Artículo 5, los Artículos 23, 33, 46 y el apartado b) del Artículo 57, se aplica igualmente a una organización regional de integración económica. Para los fines del Artículo 24, las referencias a "una mayoría de los Estados Partes" y "un tercio de los Estados Partes" no se aplicará a una organización regional de integración económica.

3. El presente Convenio estará sujeto a la ratificación de los Estados y organizaciones regionales de integración económica que lo hayan firmado.

4. Todo Estado u organización regional de integración económica que no firme el presente Convenio podrá aceptarlo, aprobarlo o adherirse a él en cualquier momento.

5. Los instrumentos de ratificación, aceptación, aprobación o adhesión se depositarán ante la Organización de Aviación Civil Internacional, designada en el presente como Depositario.

6. El presente Convenio entrará en vigor el sexagésimo día a contar de la fecha de depósito del trigésimo instrumento de ratificación, aceptación, aprobación o adhesión ante el Depositario entre los Estados que hayan depositado ese instrumento. Un instrumento depositado por una organización regional de integración económica no se tendrá en cuenta para los fines de este párrafo.

7. Para los demás Estados y otras organizaciones regionales de integración económica, el presente Convenio surtirá efecto sesenta días después de la fecha de depósito de sus instrumentos de ratificación, aceptación, aprobación o adhesión.

8. El Depositario notificará inmediatamente a todos los signatarios y Estados Partes:

a) cada firma del presente Convenio y la fecha correspondiente;

b) el depósito de todo instrumento de ratificación, aceptación, aprobación o adhesión y la fecha correspondiente;

c) la fecha de entrada en vigor del presente Convenio;

d) la fecha de entrada en vigor de toda revisión de los límites de responsabilidad establecidos en virtud del presente Convenio;

e) toda denuncia efectuada en virtud del Artículo 54.

Artículo 54 — Denuncia

1. Todo Estado Parte podrá denunciar el presente Convenio mediante notificación por escrito dirigida al Depositario.

2. La denuncia surtirá efecto ciento ochenta días después de la fecha en que el Depositario reciba la notificación.

Artículo 55 — Relación con otros instrumentos del Convenio de Varsovia

El presente Convenio prevalecerá sobre toda regla que se aplique al transporte aéreo internacional:

1. entre los Estados Partes en el presente Convenio debido a que esos Estados son comúnmente Partes de

a) el *Convenio para la unificación de ciertas reglas relativas al transporte aéreo internacional* firmado en Varsovia el 12 de octubre de 1929 (en adelante llamado el Convenio de Varsovia);

b) el *Protocolo que modifica el Convenio para la unificación de ciertas reglas relativas al transporte aéreo internacional firmado en Varsovia el 12 de octubre de 1929,* hecho en La Haya el 28 de septiembre de 1955 (en adelante llamado el Protocolo de La Haya);

c) el *Convenio, complementario del Convenio de Varsovia, para la unificación de ciertas reglas relativas al transporte aéreo internacional realizado por quien no sea el transportista contractual* firmado en Guadalajara el 18 de septiembre de 1961 (en adelante llamado el Convenio de Guadalajara);

d) el *Protocolo que modifica el Convenio para la unificación de ciertas reglas relativas al transporte aéreo internacional firmado en Varsovia, el 12 de octubre de 1929 modificado por el Protocolo hecho en La Haya el 28 de septiembre de 1955,* firmado en la ciudad de Guatemala el 8 de marzo de 1971 (en adelante llamado el Protocolo de la ciudad de Guatemala);

e) los Protocolos adicionales núms. 1 a 3 y el Protocolo de Montreal núm. 4 que modifican el Convenio de Varsovia modificado por el Protocolo de La Haya o el Convenio de Varsovia modificado por el Protocolo de La Haya y el Protocolo de la ciudad de Guatemala firmados en Montreal el 25 de septiembre de 1975 (en adelante llamados los Protocolos de Montreal); o

2. dentro del territorio de cualquier Estado Parte en el presente Convenio debido a que ese Estado es Parte en uno o más de los instrumentos mencionados en los apartados a) a e) anteriores.

Artículo 56 — Estados con más de un sistema jurídico

1. Si un Estado tiene dos o más unidades territoriales en las que son aplicables diferentes sistemas jurídicos con relación a cuestiones tratadas en el presente Convenio, dicho Estado puede declarar en el momento de la firma, ratificación, aceptación, aprobación o adhesión que el presente Convenio se extenderá a todas sus unidades territoriales o únicamente a una o más de ellas y podrá modificar esta declaración presentando otra declaración en cualquier otro momento.

2. Esas declaraciones se notificarán al Depositario e indicarán explícitamente las unidades territoriales a las que se aplica el Convenio.

3. Respecto a un Estado Parte que haya hecho esa declaración:

a) las referencias a "moneda nacional" en el Artículo 23 se interpretarán como que se refieren a la moneda de la unidad territorial pertinente de ese Estado; y

b) la referencia en el Artículo 28 a la "ley nacional" se interpretará como que se refiere a la ley de la unidad territorial pertinente de ese Estado.

Artículo 57 — Reservas

No podrá formularse ninguna reserva al presente Convenio, salvo que un Estado Parte podrá declarar en cualquier momento, mediante notificación dirigida al Depositario, que el presente Convenio no se aplicará:

a) al transporte aéreo internacional efectuado directamente por ese Estado Parte con fines no comerciales respecto a sus funciones y obligaciones como Estado soberano; ni

b) al transporte de personas, carga y equipaje efectuado para sus autoridades militares en aeronaves matriculadas en ese Estado Parte, o arrendadas por éste, y cuya capacidad total ha sido reservada por esas autoridades o en nombre de las mismas.

EN TESTIMONIO DE LO CUAL los plenipotenciarios que suscriben, debidamente autorizados, firman el presente Convenio.

HECHO en Montreal el día veintiocho de mayo de mil novecientos noventa y nueve en español, árabe, chino, francés, inglés y ruso, siendo todos los textos igualmente auténticos. El presente Convenio quedará depositado en los archivos de la Organización de Aviación Civil Internacional y el Depositario enviará copias certificadas del mismo a todos los Estados Partes en el presente Convenio, así como también a todos los Estados Partes en el Convenio de Varsovia, el Protocolo de La Haya, el Convenio de Guadalajara, el Protocolo de la ciudad de Guatemala y los Protocolos de Montreal.

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КОНВЕНЦИЯ

ДЛЯ УНИФИКАЦИИ НЕКОТОРЫХ ПРАВИЛ МЕЖДУНАРОДНЫХ ВОЗДУШНЫХ ПЕРЕВОЗОК

ГОСУДАРСТВА – УЧАСТНИКИ НАСТОЯЩЕЙ КОНВЕНЦИИ,

ПРИЗНАВАЯ значительный вклад Конвенции для унификации некоторых правил, касающихся международных воздушных перевозок, подписанной в Варшаве 12 октября 1929 года, в дальнейшем именуемой "Варшавской конвенцией", и других связанных с ней документов в дело упорядочения международного частного воздушного права,

ПРИЗНАВАЯ необходимость модернизации и консолидации Варшавской конвенции и связанных с ней документов,

ПРИЗНАВАЯ важность обеспечения защиты интересов потребителей при международных воздушных перевозках и необходимость справедливой компенсации на основе принципа наиболее полного возмещения,

ВНОВЬ ПОДТВЕРЖДАЯ желательность упорядоченного развития перевозок международным воздушным транспортом и беспрепятственного передвижения пассажиров, багажа и грузов в соответствии с принципами и целями Конвенции о международной гражданской авиации, совершенной в Чикаго 7 декабря 1944 года,

БУДУЧИ УБЕЖДЕННЫМИ в том, что коллективные действия государств по дальнейшей гармонизации и кодификации некоторых правил, регулирующих международные воздушные перевозки, в форме новой конвенции являются наиболее адекватным способом достижения справедливого баланса интересов,

ДОГОВОРИЛИСЬ О НИЖЕСЛЕДУЮЩЕМ:

Глава I

Общие положения

Статья 1. Сфера применения

1. Настоящая Конвенция применяется при всякой международной перевозке людей, багажа или груза, осуществляемой за вознаграждение посредством воздушного судна. Она применяется также к бесплатным перевозкам, осуществляемым посредством воздушного судна авиатранспортным предприятием.

2. *Международной перевозкой* в смысле настоящей Конвенции называется всякая перевозка, при которой, согласно определению сторон, место отправления и место назначения вне зависимости от того, имеются или нет перерыв в перевозке или перегрузка, расположены либо на территории двух государств-участников, либо на территории одного и того же

государства-участника, если согласованная остановка предусмотрена на территории другого государства, даже если это государство не является государством-участником. Перевозка без подобной остановки между двумя пунктами, находящимися на территории одного и того же государства-участника, не рассматривается в смысле настоящей Конвенции как международная.

3. Перевозка, подлежащая осуществлению посредством нескольких последовательных перевозчиков, почитается образующей, с точки зрения применения настоящей Конвенции, единую перевозку, если она рассматривалась сторонами как одна операция, вне зависимости от того, была ли она заключена в виде одного договора или ряда договоров, и она не теряет своего международного характера исключительно в силу того, что один или несколько договоров должны быть выполнены полностью на территории одного и того же государства.

4. Настоящая Конвенция применяется также к перевозке, описанной в главе V, с учетом изложенных в ней условий.

Статья 2. Перевозки, совершаемые государством, и перевозки почтовых отправлений

1. Настоящая Конвенция применяется к перевозкам, совершенным государством или другими юридическими лицами публичного права, отвечающими условиям, предусмотренным в статье 1.

2. При перевозке почтовых отправлений перевозчик несет ответственность только перед соответствующей почтовой администрацией в соответствии с правилами, применяемыми к отношениям между перевозчиками и почтовыми администрациями.

3. За исключением указанного в пункте 2 настоящей статьи, положения настоящей Конвенции не применяются к перевозке почтовых отправлений.

Глава II

Документация и обязанности сторон, касающиеся перевозки пассажиров, багажа и груза

Статья 3. Пассажиры и багаж

1. При перевозке пассажиров выдается индивидуальный или групповой перевозочный документ, содержащий:

a) указание пунктов отправления и назначения;

b) если пункты отправления и назначения находятся на территории одного и того же государства-участника, а одна или несколько предусмотренных остановок находятся на территории другого государства, указание по крайней мере одной такой остановки.

2. Вместо документа, упомянутого в пункте 1, могут использоваться любые другие средства, сохраняющие запись информации, указанной в этом пункте. Если используются такие

другие средства, перевозчик предлагает предоставить пассажиру письменное изложение информации, сохраненной таким образом.

3. Перевозчик предоставляет пассажиру багажную идентификационную бирку на каждое место зарегистрированного багажа.

4. Пассажиру вручается письменное уведомление о том, что в случае применения настоящей Конвенции она регламентирует и может ограничивать ответственность перевозчиков в случае смерти или телесного повреждения лица и при уничтожении, утере или повреждении багажа и при задержке.

5. Несоблюдение положений предыдущих пунктов не затрагивает существования или действительности договора перевозки, который тем не менее подпадает под действие правил настоящей Конвенции, включая правила, касающиеся ограничения ответственности.

Статья 4. Груз

1. При перевозке груза выдается авиагрузовая накладная.

2. Вместо авиагрузовой накладной могут использоваться любые другие средства, сохраняющие запись о предстоящей перевозке. Если используются такие другие средства, перевозчик, по просьбе отправителя, выдает ему квитанцию на груз, позволяющую опознать груз и получить доступ к информации, содержащейся в записи, сохраняемой такими другими средствами.

Статья 5. Содержание авиагрузовой накладной или квитанции на груз

Авиагрузовая накладная или квитанция на груз содержит:

a) указание пунктов отправления и назначения;

b) если пункты отправления и назначения находятся на территории одного и того же государства-участника, а одна или несколько предусмотренных остановок находятся на территории другого государства, указание по крайней мере одной такой остановки; и

c) указание веса отправки.

Статья 6. Документ, касающийся характера груза

В случае необходимости в соответствии с процедурами, установленными таможенными, полицейскими и аналогичными государственными органами, от отправителя может потребоваться представление документа с указанием характера груза. Настоящее положение не создает для перевозчика вытекающих из него обязанностей, обязательств или ответственности.

Статья 7. Описание авиагрузовой накладной

1. Авиагрузовая накладная составляется отправителем в трех подлинных экземплярах.

2. Первый экземпляр имеет пометку "для перевозчика" и подписывается отправителем. Второй экземпляр имеет пометку "для получателя" и подписывается отправителем и перевозчиком. Третий экземпляр подписывается перевозчиком, который передает его отправителю по принятии груза.

3. Подписи перевозчика и отправителя могут быть напечатаны или проставлены штемпелем.

4. Если, по просьбе отправителя, авиагрузовую накладную составляет перевозчик, то перевозчик рассматривается, до доказательства противного, как действующий от имени отправителя.

Статья 8. Документация при перевозке нескольких мест

Если имеется более одного места:

a) перевозчик груза имеет право требовать от отправителя составления отдельных авиагрузовых накладных;

b) отправитель имеет право требовать от перевозчика выдачи отдельных квитанций на груз, если используются другие средства, указанные в пункте 2 статьи 4.

Статья 9. Несоблюдение требований к документации

Несоблюдение положений статей 4–8 не затрагивает существования или действительности договора перевозки, который, тем не менее, подпадает под действие правил настоящей Конвенции, включая правила, касающиеся ограничения ответственности.

Статья 10. Ответственность за правильность сведений в документации

1. Отправитель отвечает за правильность сведений и заявлений, касающихся груза, внесенных им или от его имени в авиагрузовую накладную или представленных им или от его имени перевозчику для внесения в квитанцию на груз или для включения в запись, сохраняемую другими средствами, указанными в пункте 2 статьи 4. Предшествующее положение применяется также в случае, когда лицо, действующее от имени отправителя, является также агентом перевозчика.

2. Отправитель несет ответственность перед перевозчиком за любой вред, понесенный им или любым другим лицом, перед которым перевозчик несет ответственность, вследствие неправильности, неточности или неполноты сведений и заявлений, представленных отправителем или от его имени.

3. За исключением положений пунктов 1 и 2 настоящей статьи, перевозчик несет ответственность перед отправителем за любой вред, понесенный им или любым другим лицом, перед которым отправитель несет ответственность, вследствие неправильности, неточности или

неполноты сведений и заявлений, внесенных перевозчиком или от его имени в квитанцию на груз или в запись, сохраняемую другими средствами, указанными в пункте 2 статьи 4.

Статья 11. Доказательная сила документации

1. Авиагрузовая накладная или квитанция на груз, до доказательства противного, являются свидетельством заключения договора, принятия груза и условий перевозки, указанных в них.

2. Любые сведения в авиагрузовой накладной или в квитанции на груз о весе, размерах и упаковке груза, а также о числе мест, до доказательства противного, являются свидетельством сообщенных данных; данные о количестве, объеме и состоянии груза не служат доказательством против перевозчика, за исключением тех случаев, когда им произведена их проверка в присутствии отправителя с указанием об этом в авиагрузовой накладной или квитанции на груз или когда они касаются очевидного состояния груза.

Статья 12. Право распоряжаться грузом

1. Отправитель имеет право, при условии выполнения всех обязательств, вытекающих из договора перевозки, распоряжаться грузом, забирая его в аэропорту отправления или назначения, задерживая его в ходе перевозки в любом пункте посадки, давая указания о выдаче его в пункте назначения или в ходе перевозки иному лицу, чем первоначально указанному получателю, или требуя возвращения груза в аэропорт отправления. Отправитель не должен использовать право распоряжения грузом в ущерб перевозчику или другим отправителям и обязан возместить все расходы, вытекающие из применения этого права.

2. Если выполнить распоряжения отправителя невозможно, перевозчик обязан немедленно уведомить отправителя об этом.

3. Если перевозчик выполняет указания отправителя в отношении распоряжения грузом, не требуя представления выданного последнему экземпляра авиагрузовой накладной или квитанции на груз, то тем самым перевозчик принимает на себя, сохраняя право регресса к отправителю, ответственность за любой вред, который может быть в связи с этим причинен законному владельцу этого экземпляра авиагрузовой накладной или квитанции на груз.

4. Право отправителя прекращается в тот момент, когда, согласно статье 13, возникает право получателя. Однако, если получатель отказывается принять груз или с ним невозможно связаться, отправитель снова приобретает свое право распоряжения.

Статья 13. Выдача груза

1. За исключением случаев, когда отправитель осуществил свои права согласно статье 12, получатель имеет право требовать от перевозчика, с момента прибытия груза в пункт назначения, выдачи ему груза после уплаты причитающихся платежей и выполнения условий перевозки.

2. Если не оговорено иное, перевозчик обязан известить получателя немедленно по прибытии груза.

3. Если перевозчиком признана утрата груза или если груз не прибыл по истечении семидневного срока со дня, когда он должен был прибыть, получатель вправе осуществить по отношению к перевозчику права, вытекающие из договора перевозки.

Статья 14. Осуществление прав отправителя и получателя

Отправитель и получатель могут соответственно осуществлять все права, предоставленные им статьями 12 и 13, каждый от своего имени, независимо от того, действует ли он в своих собственных интересах или в интересах другого, но при условии выполнения обязательств, налагаемых договором перевозки.

Статья 15. Отношения между отправителем и получателем или взаимные отношения третьих лиц

1. Статьи 12, 13 и 14 не затрагивают отношений ни между отправителем и получателем, ни между третьими лицами, права которых производны либо от отправителя, либо от получателя.

2. Любая оговорка, отступающая от положений статей 12, 13 и 14, должна быть занесена в авиагрузовую накладную или квитанцию на груз.

Статья 16. Формальности таможенных, полицейских или других государственных органов

1. Отправитель обязан представить такие сведения и документы, которые необходимы для выполнения формальностей таможенных, полицейских или других государственных органов, до передачи груза получателю. Отправитель отвечает перед перевозчиком за любой вред, который причинен в результате отсутствия, недостаточности или неправильности любых таких сведений или документов, за исключением тех случаев, когда вред был причинен по вине перевозчика, его служащих или агентов.

2. Перевозчик не обязан проверять такие сведения или документы в отношении их точности или достаточности.

Глава III

Ответственность перевозчика и степень компенсации за вред

Статья 17. Смерть и телесное повреждение пассажиров. Повреждение багажа

1. Перевозчик отвечает за вред, происшедший в случае смерти или телесного повреждения пассажира, только при условии, что происшествие, которое явилось причиной смерти или повреждения, произошло на борту воздушного судна или во время любых операций по посадке или высадке.

2. Перевозчик отвечает за вред, происшедший в случае уничтожения, утери или повреждения зарегистрированного багажа, только при условии, что случай, который явился

причиной уничтожения, утери или повреждения, произошел на борту воздушного судна или во время любого периода, в течение которого зарегистрированный багаж находился под охраной перевозчика. Однако перевозчик не несет ответственности, если и в той мере, в какой вред явился результатом присущего багажу дефекта, качества или порока. В отношении незарегистрированного багажа, включая личные вещи, перевозчик несет ответственность, если вред причинен по его вине или по вине его служащих или агентов.

3. Если перевозчик признает утерю зарегистрированного багажа или если зарегистрированный багаж не поступил по истечении двадцати одного дня с даты, когда он должен был прибыть, пассажиру разрешается осуществлять по отношению к перевозчику права, вытекающие из договора перевозки.

4. В настоящей Конвенции термин "багаж", поскольку не предусмотрено иное, означает как зарегистрированный багаж, так и незарегистрированный багаж.

Статья 18. Повреждение груза

1. Перевозчик отвечает за вред, происшедший в случае уничтожения, утери или повреждения груза, только при условии, что событие, ставшее причиной такого вреда, произошло во время воздушной перевозки.

2. Однако перевозчик не несет ответственности, если и в той мере, в какой он докажет, что уничтожение, утеря или повреждение груза произошли в результате одного или нескольких перечисленных ниже обстоятельств:

a) присущего грузу дефекта, качества или порока;

b) неправильной упаковки груза лицом, кроме перевозчика, его служащих или агентов;

c) акта войны или вооруженного конфликта;

d) акта органа государственной власти, связанного с ввозом, вывозом или транзитом груза.

3. Воздушная перевозка по смыслу пункта 1 настоящей статьи охватывает период времени, в течение которого груз находится под охраной перевозчика.

4. Период времени воздушной перевозки не включает в себя никакой наземной перевозки, морской перевозки или перевозки внутренним водным путем, осуществленной вне аэропорта. Однако если подобная перевозка осуществляется во исполнение договора воздушной перевозки в целях погрузки, выдачи или перегрузки, любой вред, до доказательства противного, считается следствием события, имевшего место во время воздушной перевозки. Если перевозчик без согласия отправителя заменяет перевозку, которую по соглашению между сторонами предполагалось осуществить по воздуху, полностью или частично перевозкой каким-либо другим видом транспорта, такая перевозка другим видом транспорта считается перевозкой, осуществляемой в период времени воздушной перевозки.

Статья 19. Задержка

Перевозчик несет ответственность за вред, происшедший вследствие задержки при воздушной перевозке пассажиров, багажа или груза. Однако перевозчик не несет ответственности за вред, причиненный вследствие задержки, если он докажет, что им и его служащими и агентами приняты все возможные, разумно необходимые меры к тому, чтобы избежать вреда, или что ему или им было невозможно принять такие меры.

Статья 20. Освобождение от ответственности

Если перевозчик докажет, что вред был причинен или его причинению способствовали небрежность, неправильное действие или бездействие лица, требующего возмещения, или лица, от которого происходят его или ее права, перевозчик полностью или частично освобождается от ответственности перед требующим возмещения лицом в той мере, в какой такие небрежность, неправильное действие или бездействие причинили вред или способствовали его причинению. Когда требование о возмещении заявлено иным лицом, чем пассажир, в связи со смертью или телесным повреждением, понесенным этим последним, перевозчик равным образом полностью или частично освобождается от ответственности в той мере, в какой он докажет, что небрежность, другое неправильное действие или бездействие этого пассажира причинили вред или способствовали его причинению. Настоящая статья применяется ко всем положениям об ответственности в настоящей Конвенции, включая пункт 1 статьи 21.

Статья 21. Компенсация в случае смерти или телесного повреждения пассажиров

1. В отношении вреда, причиненного согласно пункту 1 статьи 17 и не превышающего 100 000 специальных прав заимствования на каждого пассажира, перевозчик не может исключать или ограничивать свою ответственность.

2. Перевозчик не несет ответственности за вред, причиненный согласно пункту 1 статьи 17, в той мере, в какой вред превышает на каждого пассажира 100 000 специальных прав заимствования, если перевозчик докажет, что:

a) такой вред не был причинен из-за небрежности, или другого неправильного действия, или бездействия перевозчика, или его служащих, или агентов; или

b) такой вред причинен исключительно из-за небрежности, или другого неправильного действия, или бездействия третьей стороны.

Статья 22. Пределы ответственности в отношении задержки, багажа и груза

1. В случае вреда, причиненного при перевозке лиц в результате задержки, о которой говорится в статье 19, ответственность перевозчика в отношении каждого пассажира ограничивается суммой 4150 специальных прав заимствования.

2. При перевозке багажа ответственность перевозчика в случае уничтожения, утери, повреждения или задержки ограничивается суммой 1000 специальных прав заимствования в отношении каждого пассажира, за исключением случаев, когда пассажир сделал в момент

передачи зарегистрированного багажа перевозчику особое заявление о заинтересованности в доставке и уплатил дополнительный сбор, если это необходимо. В этом случае перевозчик обязан уплатить сумму, не превышающую объявленную сумму, если только он не докажет, что эта сумма превышает действительную заинтересованность пассажира в доставке.

3. При перевозке груза ответственность перевозчика в случае уничтожения, утери, повреждения или задержки ограничивается суммой 17 специальных прав заимствования за килограмм, за исключением случаев, когда отправитель сделал в момент передачи места перевозчику особое заявление о заинтересованности в доставке и уплатил дополнительный сбор, если это необходимо. В этом случае перевозчик обязан уплатить сумму, не превышающую объявленную сумму, если только он не докажет, что эта сумма превышает действительную заинтересованность отправителя в доставке.

4. В случае уничтожения, утери, повреждения или задержки части груза или любого предмета, содержащегося в нем, при определении предела ответственности перевозчика во внимание принимается только общий вес соответствующего места или мест. Однако когда уничтожение, утеря, повреждение или задержка части груза или любого содержащегося в нем предмета влияет на стоимость других мест, включенных в одну и ту же авиагрузовую накладную, или в ту же квитанцию, или, если они не выданы, в ту же запись, сохраняемую другими средствами, указанными в пункте 2 статьи 4, при определении предела ответственности должен также приниматься во внимание общий вес такого места или мест.

5. Вышеуказанные положения пунктов 1 и 2 настоящей статьи не применяются, если будет доказано, что вред произошел в результате действия или бездействия перевозчика, его служащих или агентов, совершенного с намерением причинить вред или безрассудно и с сознанием того, что в результате этого, возможно, произойдет вред, при условии, что в случае такого действия или бездействия служащего или агента будет также доказано, что этот служащий или агент действовал в рамках своих обязанностей.

6. Пределы, установленные статьей 21 и настоящей статьей, не препятствуют суду присудить в соответствии со своим законом дополнительно все или часть судебных издержек и других расходов по судебному разбирательству, понесенных истцом, включая проценты. Вышеуказанное положение не применяется, если сумма, присужденная в порядке возмещения вреда, исключая судебные издержки и другие расходы, связанные с судебным разбирательством, не превышает сумму, которую перевозчик в письменном виде предложил истцу в течение шести месяцев со дня причинения вреда или до начала судебного дела, если эта дата является более поздней.

Статья 23. Перевод валютных единиц

1. Суммы, указанные в специальных правах заимствования в настоящей Конвенции, рассматриваются как относящиеся к специальным правам заимствования, как они определены Международным валютным фондом. Перевод этих сумм в национальные валюты в случае судебных разбирательств производится в соответствии со стоимостью таких валют в специальных правах заимствования на дату судебного решения. Стоимость в специальных правах заимствования национальной валюты государства-участника, которое является членом Международного валютного фонда, исчисляется в соответствии с методом определения стоимости, применяемым Международным валютным фондом для его собственных операций и расчетов на дату судебного решения. Стоимость в специальных правах заимствования национальной валюты государства-участника, которое не является членом Международного валютного фонда, исчисляется по методу, установленному этим государством-участником.

2. Тем не менее государства, которые не являются членами Международного валютного фонда и законодательство которых не позволяет применять положения пункта 1 настоящей статьи, могут при ратификации или присоединении или в любое время после этого заявить, что предел ответственности перевозчика, предписываемый в статье 21, устанавливается в сумме 1 500 000 валютных единиц на пассажира при судебном разбирательстве на их территории; 62 500 валютных единиц на пассажира в отношении пункта 1 статьи 22; 15 000 валютных единиц на пассажира в отношении пункта 2 статьи 22; и 250 валютных единиц за килограмм в отношении пункта 3 статьи 22. Такая валютная единица состоит из шестидесяти пяти с половиной миллиграммов золота пробы девятьсот тысячных. Указанные суммы могут быть переведены в соответствующую национальную валюту в округленных цифрах. Перевод таких сумм в национальную валюту осуществляется согласно законодательству соответствующего государства.

3. Расчеты, упомянутые в последнем предложении пункта 1 настоящей статьи, и перевод, упомянутый в пункте 2 настоящей статьи, выполняются таким образом, чтобы выразить в национальной валюте государства-участника, насколько это возможно, такую же реальную стоимость количественных показателей, указанных в статьях 21 и 22, какая будет получена в результате применения первых трех предложений пункта 1 настоящей статьи. Государства-участники информируют депозитария о методе исчисления согласно пункту 1 настоящей статьи или о результатах перевода согласно пункту 2 настоящей статьи соответственно при сдаче на хранение документа о ратификации, принятии, утверждении или присоединении к настоящей Конвенции, а также после каждого их изменения.

Статья 24. Пересмотр пределов

1. Без ущерба для положений статьи 25 настоящей Конвенции и с учетом приводимых ниже положений пункта 2 пределы ответственности, установленные в статьях 21, 22 и 23, пересматриваются депозитарием каждые пять лет, причем первый такой пересмотр проводится в конце пятого года после даты вступления в силу настоящей Конвенции или, если Конвенция не вступит в силу в течение пяти лет с даты, когда она была впервые открыта для подписания, в течение первого года после ее вступления в силу, с использованием коэффициента инфляции, соответствующего совокупным темпам инфляции за период со времени предыдущего пересмотра, или при первом пересмотре – с даты вступления в силу Конвенции. Размер темпов инфляции, используемый при определении коэффициента инфляции, исчисляется на основе средневзвешенных годовых ставок увеличения или понижения индексов потребительских цен в государствах, валюты которых образуют специальные права заимствования, упомянутые в пункте 1 статьи 23.

2. Если в результате пересмотра, упомянутого в предыдущем пункте, делается вывод о том, что коэффициент инфляции превысил 10 процентов, то депозитарий уведомляет государства-участники об изменении пределов ответственности. Любое такое изменение вступает в силу через шесть месяцев после уведомления о нем государств-участников. Если в течение трех месяцев после уведомления о нем государств-участников большинство государств-участников заявят о своем несогласии, изменение не вступает в силу и депозитарий передает данный вопрос на рассмотрение совещания государств-участников. Депозитарий незамедлительно уведомляет все государства-участники о вступлении в силу любого изменения.

3. Невзирая на положения пункта 1 настоящей статьи, процедура, упомянутая в пункте 2 настоящей статьи, применяется в любое время при условии, что просьба об этом высказана одной третью государств-участников и что коэффициент инфляции, упомянутый в пункте 1, превысил 30 процентов за период с даты предыдущего пересмотра или с даты вступления в силу настоящей

Конвенции, если пересмотр еще не проводился. Последующие пересмотры с использованием процедуры, описанной в пункте 1 настоящей статьи, будут проводиться каждые пять лет, начиная с конца пятого года после даты пересмотра в соответствии с настоящим пунктом.

Статья 25. Оговорка в отношении пределов

Перевозчик может оговорить, что в отношении договора перевозки применяются более высокие пределы ответственности, чем предусмотренные в настоящей Конвенции, либо никакие пределы ответственности не применяются.

Статья 26. Недействительность договорных положений

Всякая оговорка, клонящаяся к освобождению перевозчика от ответственности или же установлению предела ответственности, меньшего, чем тот, который установлен в настоящей Конвенции, является недействительной и не порождает никаких последствий, но недействительность этой оговорки не влечет за собой недействительности договора, который продолжает подпадать под действие положений настоящей Конвенции.

Статья 27. Свобода заключения договора

Ничто в настоящей Конвенции не препятствует перевозчику отказаться от заключения договора перевозки, отказаться от каких-либо средств защиты, предусматриваемых Конвенцией, или установить условия, не противоречащие положениям настоящей Конвенции.

Статья 28. Предварительные выплаты

В случае авиационного происшествия, вызвавшего смерть или повреждение пассажиров, перевозчик, если это предусматривается его национальным законодательством, незамедлительно производит предварительные выплаты физическому лицу или лицам, которые имеют право требовать компенсацию, для удовлетворения безотлагательных экономических потребностей таких лиц. Такие предварительные выплаты не означают признание ответственности и могут идти в зачет последующих выплат перевозчика в плане возмещения убытков.

Статья 29. Основания для иска

При перевозке пассажиров, багажа и груза любой иск об ответственности, независимо от его основания, будь то на основании настоящей Конвенции, договора, правонарушения или на любом другом основании, может быть предъявлен лишь в соответствии с условиями и такими пределами ответственности, которые предусмотрены настоящей Конвенцией, без ущерба для определения круга лиц, которые имеют право на иск, и их соответствующих прав. При любом таком иске штрафы, штрафные санкции или любые другие выплаты, не относящиеся к компенсации фактического вреда, не подлежат взысканию.

Статья 30. Служащие, агенты. Общая сумма исков

1. Если иск предъявлен к служащему или агенту перевозчика в связи с вредом, о котором говорится в настоящей Конвенции, такой служащий или агент, если он докажет, что он действовал в рамках своих служебных обязанностей, имеет право ссылаться на условия и пределы ответственности, на которые имеет право ссылаться сам перевозчик на основании настоящей Конвенции.

2. Общая сумма, которая может быть взыскана с перевозчика, его служащих и агентов, не должна в этом случае превышать указанных пределов.

3. За исключением случаев перевозки груза, положения пунктов 1 и 2 настоящей статьи не применяются, если будет доказано, что вред явился результатом действия или бездействия служащего или агента, совершенного с намерением причинить вред или безрассудно и с сознанием того, что в результате этого может быть причинен вред.

Статья 31. Своевременное внесение возражений

1. Получение зарегистрированного багажа или груза получателем без возражений составляет предположение, впредь до доказательства противного, что багаж или груз были доставлены в надлежащем состоянии и согласно перевозочному документу или записи, сохраняемой другими средствами, упоминаемыми в пункте 2 статьи 3 и в пункте 2 статьи 4.

2. В случае причинения вреда лицо, имеющее право на получение груза, должно направить перевозчику возражение немедленно по обнаружении вреда и не позднее семи дней со дня получения зарегистрированного багажа и четырнадцати дней со дня получения груза. В случае задержки протест должен быть произведен не позднее двадцати одного дня, считая со дня, когда багаж или груз были переданы в его распоряжение.

3. Всякое возражение должно быть осуществлено письменно и вручено или отправлено в вышеупомянутые сроки.

4. При отсутствии возражения в вышеупомянутые сроки никакие иски против перевозчика на принимаются, кроме случая обмана со стороны последнего.

Статья 32. Смерть лица, несущего ответственность

В случае смерти лица, несущего ответственность, иск о возмещении вреда предъявляется в соответствии с условиями настоящей Конвенции к лицам, на законном основании представляющим его имущество.

Статья 33. Юрисдикция

1. Иск об ответственности должен быть предъявлен по выбору истца в пределах территории одного из государств-участников либо в суде по месту жительства перевозчика, по месту его основного коммерческого предприятия или по месту, где он имеет коммерческое предприятие, посредством которого был заключен договор, либо в суде места назначения перевозки.

2. В отношении вреда, происшедшего в результате смерти или телесного повреждения пассажира, иск об ответственности может быть возбужден в одном из судов, упомянутых в пункте 1 настоящей статьи, или на территории государства-участника, в котором пассажир на момент происшествия имеет основное и постоянное место жительства и в которое или из которого перевозчик предоставляет услуги, связанные с воздушной перевозкой пассажиров либо на собственных воздушных судах, либо на воздушных судах другого перевозчика на основании коммерческого соглашения и в котором этот перевозчик осуществляет деятельность, связанную с воздушной перевозкой пассажиров, используя помещения, арендуемые самим перевозчиком или другим перевозчиком, с которым он имеет коммерческое соглашение, или принадлежащие ему или такому другому перевозчику.

3. Для целей пункта 2:

a) "коммерческое соглашение" означает соглашение между перевозчиками, кроме агентского соглашения, касающееся предоставления их совместных услуг, связанных с воздушными перевозками пассажиров;

b) "основное и постоянное место жительства" означает одно зафиксированное и постоянное место проживания пассажира на момент происшествия. Гражданство пассажира не является определяющим фактором в этом отношении.

4. Процедура определяется законом суда, в котором предъявлен иск.

Статья 34. Арбитраж

1. С учетом положений настоящей статьи стороны в договоре перевозки груза могут установить, что любой спор, касающийся ответственности перевозчика по настоящей Конвенции, подлежит разрешению в арбитраже. Такая договоренность оформляется в письменной форме.

2. Арбитражное разбирательство по выбору истца проводится в одном из мест в соответствии с компетенцией судов, предусмотренной в статье 33.

3. Арбитр или арбитражный трибунал применяют положения настоящей Конвенции.

4. Положения пунктов 2 и 3 настоящей статьи считаются составной частью любой арбитражной оговорки или договоренности, и любое условие такой оговорки или договоренности, несовместимое с ними, является ничтожным и недействительным.

Статья 35. Исковая давность

1. Иск об ответственности должен быть возбужден, под страхом утраты права на иск, в течение двух лет с момента прибытия по назначению, или со дня, когда воздушное судно должно было бы прибыть, или с момента остановки перевозки.

2. Порядок исчисления этого срока определяется законом суда, в котором вчинен иск.

Статья 36. Последовательные перевозчики

1. В случаях перевозок, регулируемых определением пункта 3 статьи 1, производимых несколькими последовательными перевозчиками, каждый перевозчик, принимающий пассажиров, багаж или груз, подпадает под действие правил, установленных настоящей Конвенцией, и рассматривается в качестве одной из сторон в договоре перевозки, поскольку этот договор имеет отношение к части перевозки, совершаемой под его контролем.

2. В случае такой перевозки пассажир или любое лицо, имеющее право претендовать на компенсацию от его имени, может возбудить дело лишь против перевозчика, производившего ту перевозку, в течение которой произошли происшествие или задержка, за исключением случая, когда по специальному условию первый перевозчик принял ответственность за весь путь.

3. В отношении багажа или груза пассажир или отправитель может возбудить дело против первого перевозчика, и пассажир или получатель, имеющий право на получение, – против последнего; и тот и другой могут, кроме того, взыскать с перевозчика, совершавшего перевозку, в течение которой произошли уничтожение, утеря, повреждение или задержка. Эти перевозчики будут нести солидарную ответственность перед отправителем и получателем.

Статья 37. Право регресса против третьих лиц

Настоящая Конвенция ни в коей мере не предрешает вопроса о том, имеет ли лицо, ответственное за вред в соответствии с ее положениями, право регресса против любого другого лица.

Глава IV

Смешанные перевозки

Статья 38. Смешанные перевозки

1. В случае смешанных перевозок, осуществляемых частично воздушным и частично каким-либо иным способом перевозки, положения настоящей Конвенции применяются с учетом пункта 4 статьи 18 лишь к воздушной перевозке, если притом последняя отвечает условиям статьи 1.

2. Ничто в настоящей Конвенции не мешает сторонам в случае смешанной перевозки включать в воздушно-перевозочный документ условия, относящиеся к перевозкам иными способами перевозки, при условии, что положения настоящей Конвенции будут применимы в отношении перевозки по воздуху.

Глава V

Воздушные перевозки, осуществляемые лицами, не являющимися перевозчиками по договору

Статья 39. Перевозчик по договору. Фактический перевозчик

Положения настоящей главы применяются в тех случаях, когда лицо (в дальнейшем именуемое "перевозчиком по договору") в качестве основной стороны заключает договор перевозки, регулируемой настоящей Конвенцией, с пассажиром, или отправителем, или с лицом, действующим от имени пассажира или отправителя, а другое лицо (в дальнейшем именуемое "фактическим перевозчиком"), будучи уполномоченным перевозчиком по договору, осуществляет всю перевозку или часть ее, но не является в отношении такой части последовательным перевозчиком в смысле настоящей Конвенции. Наличие упомянутого полномочия предполагается до доказательства противного.

Статья 40. Ответственность перевозчика по договору и фактического перевозчика

Если иное не оговорено в настоящей главе, в тех случаях, когда фактический перевозчик осуществляет полностью или частично перевозку, которая в соответствии с договором, предусмотренным в статье 39, регулируется настоящей Конвенцией, как перевозчик по договору, так и фактический перевозчик подпадают под действие правил настоящей Конвенции, причем первый из них – в отношении всей перевозки, предусмотренной в договоре, второй же – лишь в отношении той перевозки, которую он осуществляет.

Статья 41. Взаимное отнесение ответственности

1. Действия или бездействие фактического перевозчика и его служащих и агентов, действовавших в рамках своих обязанностей, в отношении перевозки, осуществляемой фактическим перевозчиком, считаются действиями или бездействием и перевозчика по договору.

2. Действия или бездействие перевозчика по договору и его служащих и агентов, действовавших в рамках своих обязанностей, в отношении перевозки, осуществляемой фактическим перевозчиком, считаются действиями или бездействием и фактического перевозчика. Однако эти действия или бездействие ни в коем случае не возлагают на фактического перевозчика ответственность, которая превышала бы пределы, предусмотренные в статьях 21, 22, 23 и 24. Никакое особое соглашение, в соответствии с которым перевозчик по договору принимает на себя обязательства, не возлагаемые настоящей Конвенцией, никакой отказ от прав или аргументов защиты, оговоренных настоящей Конвенцией, или какие бы то ни было специальные заявления о заинтересованности в доставке, предусмотренные в статье 22, не распространяются на фактического перевозчика без его на то согласия.

Статья 42. Обращение распоряжений и возражений

Любые распоряжения и возражения, предъявляемые перевозчику на основании настоящей Конвенции, имеют одинаковую силу вне зависимости от того, обращены ли они к

перевозчику по договору или к фактическому перевозчику. Однако распоряжения, предусмотренные в статье 12, имеют силу, лишь если они обращены к перевозчику по договору.

Статья 43. Служащие и агенты

В отношении перевозки, осуществляемой фактическим перевозчиком, любой служащий или агент этого перевозчика или перевозчика по договору, если он докажет, что он действовал в рамках своих обязанностей, имеет право ссылаться на условия и пределы ответственности, относящиеся по настоящей Конвенции к перевозчику, служащим или агентом которого он является, если, однако, не будет доказано, что он действовал таким образом, что в соответствии с настоящей Конвенцией ссылка на пределы ответственности не может иметь место.

Статья 44. Общая сумма возмещения

В отношении перевозки, осуществляемой фактическим перевозчиком, общая сумма возмещения, которая может быть получена с этого перевозчика, с перевозчика по договору и с его служащих и агентов, действовавших в рамках своих обязанностей, не может превышать максимального возмещения, которое, на основании настоящей Конвенции, может быть взыскано либо с перевозчика по договору, либо с фактического перевозчика, причем ни одно из упомянутых лиц не несет ответственности сверх применимого к этому лицу предела.

Статья 45. Обращение исков

Всякий иск об ответственности, относящийся к перевозке, осуществляемой фактическим перевозчиком, может по выбору истца быть возбужден либо против этого перевозчика, либо против перевозчика по договору, либо против обоих, совместно или в отдельности. Если иск возбужден лишь против одного из этих перевозчиков, он имеет право привлечь и другого перевозчика к делу перед судом, в котором вчинен иск, причем процедура такого привлечения и его последствия определяются законом этого суда.

Статья 46. Дополнительная юрисдикция

Всякий иск об ответственности, предусмотренный в статье 45, должен быть возбужден по выбору истца в пределах территории одного из государств-участников либо в одном из судов, в которых иск может быть вчинен против перевозчика по договору на основании статьи 33, либо в суде по месту жительства фактического перевозчика или по месту нахождения его основного коммерческого предприятия.

Статья 47. Недействительность договорных положений

Всякая оговорка, клонящаяся к освобождению перевозчика по договору или фактического перевозчика от ответственности на основании настоящей главы или же к установлению предела ответственности, меньшего, чем тот, который применим в соответствии с настоящей главой, является недействительной и не порождает никаких последствий, но недействительность этой оговорки не влечет за собой недействительности всего договора, который продолжает подпадать под действие положений настоящей главы.

Статья 48. Взаимоотношения перевозчика по договору и фактического перевозчика

За исключением положений статьи 45, ничто в настоящей главе не затрагивает возникающие между перевозчиками права и обязанности, включая любое право регресса или освобождения от ответственности.

Глава VI

Прочие положения

Статья 49. *Обязательное применение*

Являются недействительными всякие положения договора перевозки и всякие особые соглашения, предшествовавшие причинению вреда, которыми стороны отступали бы от правил настоящей Конвенции либо путем определения подлежащего применению закона, либо путем изменения правил о юрисдикции.

Статья 50. Страхование

Государства-участники требуют, чтобы их перевозчики обеспечили надлежащее страхование своей ответственности в соответствии с настоящей Конвенцией. Государство-участник, в которое перевозчик выполняет полеты, может потребовать от него доказательств обеспечения надлежащего страхования своей ответственности по настоящей Конвенции.

Статья 51. Перевозки, осуществляемые при исключительных обстоятельствах

Положения статей с 3 по 5, 7 и 8, касающиеся перевозочных документов, не применяются к перевозкам, осуществляемым при исключительных обстоятельствах вне рамок обычных операций по эксплуатации воздушного транспорта.

Статья 52. Определение дней

Когда в настоящей Конвенции речь идет о днях, то подразумеваются календарные дни, а не рабочие дни.

Глава VII

Заключительные положения

Статья 53. Подписание, ратификация и вступление в силу

1. Настоящая Конвенция открыта для подписания в Монреале 28 мая 1999 года государствами, участвовавшими в Международной конференции по воздушному праву, состоявшейся в Монреале с 10 по 28 мая 1999 года. После 28 мая 1999 года Конвенция будет открыта для подписания всеми государствами в Штаб-квартире Международной организации гражданской авиации в Монреале до ее вступления в силу в соответствии с пунктом 6 настоящей статьи.

2. Настоящая Конвенция открыта также для подписания региональными организациями экономической интеграции. Для целей настоящей Конвенции "региональная организация экономической интеграции" означает любую организацию, учрежденную суверенными государствами определенного региона, которая обладает компетенцией в отношении некоторых вопросов, регулируемых настоящей Конвенцией, и должным образом уполномочена подписывать и ратифицировать, принимать, утверждать настоящую Конвенцию или присоединяться к ней. Ссылка на "государство-участника" или "государства-участники" в настоящей Конвенции иным образом, чем в пункте 2 статьи 1, пункте 1 b) статьи 3, пункте b) статьи 5, статьях 23, 33, 46 и пункте b) статьи 57, распространяется в равной мере на региональную организацию экономической интеграции. Для целей статьи 24 ссылки на "большинство государств-участников" и "одну треть государств-участников" не распространяются на региональную организацию экономической интеграции.

3. Настоящая Конвенция подлежит ратификации государствами и региональными организациями экономической интеграции, которые ее подписали.

4. Любое государство или региональная организация экономической интеграции, которые не подписали настоящую Конвенцию, могут принять, утвердить ее или присоединиться к ней в любое время.

5. Ратификационные грамоты и документы о принятии, утверждении или присоединении сдаются на хранение в Международную организацию гражданской авиации, которая настоящим назначается депозитарием.

6. Настоящая Конвенция вступает в силу на шестидесятый день с даты сдачи на хранение депозитарию тридцатой ратификационной грамоты, документа о принятии, утверждении или присоединении между государствами, которые сдали на хранение такие документы. Документ, сданный на хранение региональной организацией экономической интеграции, не учитывается для целей настоящего пункта.

7. Для других государств и для других региональных организаций экономической интеграции настоящая Конвенция вступает в силу на шестидесятый день с даты сдачи на хранение ратификационной грамоты, документа о принятии, утверждении или присоединении.

8. Депозитарий незамедлительно уведомляет все государства, подписавшие Конвенцию, и все государства-участники:

a) о каждом подписании настоящей Конвенции и дате такого подписания;

b) о сдаче на хранение каждой ратификационной грамоты, документа о принятии, утверждении или присоединении и о дате такой сдачи на хранение;

c) о дате вступления в силу настоящей Конвенции;

d) о дате вступления в силу любого изменения пределов ответственности, установленных в соответствии с настоящей Конвенцией;

e) о любой денонсации в соответствии со статьей 54.

Статья 54. Денонсация

1. Любое государство-участник может денонсировать настоящую Конвенцию путем письменного уведомления депозитария.

2. Денонсация вступает в силу через сто восемьдесят дней с даты получения такого уведомления депозитарием.

Статья 55. Взаимосвязь с другими документами Варшавской конвенции

Настоящая Конвенция имеет преимущественную силу перед любыми правилами, применяемыми к международной воздушной перевозке:

1. между государствами – участниками настоящей Конвенции в силу совместного участия этих государств в:

a) *Конвенции для унификации некоторых правил, касающихся международных воздушных перевозок*, подписанной в Варшаве 12 октября 1929 года (в дальнейшем именуется Варшавской конвенцией);

b) *Протоколе об изменении Варшавской конвенции для унификации некоторых правил, касающихся международных воздушных перевозок, подписанной в Варшаве 12 октября 1929 года*, совершенном в Гааге 28 сентября 1955 года (в дальнейшем именуется Гаагским протоколом);

c) *Конвенции, дополнительной к Варшавской конвенции для унификации некоторых правил, касающихся международных воздушных перевозок, осуществляемых лицом, не являющимся перевозчиком по договору*, подписанной в Гвадалахаре 18 сентября 1961 года (в дальнейшем именуется Гвадалахарской конвенцией);

d) *Протоколе об изменении Конвенции для унификации некоторых правил, касающихся международных воздушных перевозок,* подписанной в Варшаве 12 октября 1929 года и измененной протоколом, совершенным в Гааге 28 сентября 1955 года, измененной Гаагским протоколом, подписанном в Гватемале 8 марта 1971 года (в дальнейшем именуется Гватемальским протоколом);

e) дополнительных протоколах № 1–3 и Монреальском протоколе № 4 об изменении Варшавской конвенции, измененной Гаагским протоколом, или Варшавской конвенции, измененной Гаагским и Гватемальским протоколами, подписанных в Монреале 25 сентября 1975 года (в дальнейшем именуются Монреальскими протоколами); или

2. в пределах территории любого отдельного государства – участника настоящей Конвенции в силу участия этого государства в одном или нескольких документах, упомянутых выше в подпунктах a) – e).

Статья 56. Государства, имеющие более одной правовой системы

1. Если государство имеет две или более территориальные единицы, в которых применяются различные правовые системы в отношении вопросов, регулируемых настоящей Конвенцией, оно может в момент подписания, ратификации, принятия, утверждения или присоединения заявить, что настоящая Конвенция распространяется на все его территориальные единицы или лишь на одну или более из них и может изменить это заявление, представив другое заявление в любое время.

2. Любое такое заявление доводится до сведения депозитария, и в нем должны ясно указываться территориальные единицы, к которым применяется Конвенция.

3. В отношении государства-участника, сделавшего такое заявление:

a) ссылки в статье 23 на "национальную валюту" понимаются как относящиеся к валюте соответствующей территориальной единицы этого государства; и

b) ссылки в статье 28 на "национальное законодательство" понимаются как относящиеся к законодательству соответствующей территориальной единицы этого государства.

Статья 57. Оговорки

Никакие оговорки к настоящей Конвенции не допускаются, за исключением того, что государство-участник может в любое время заявить путем уведомления депозитария о том, что настоящая Конвенция не распространяется на:

a) международные воздушные перевозки, выполняемые непосредственно этим государством-участником в некоммерческих целях в связи с осуществлением его функций и обязанностей в качестве суверенного государства; и/или

b) перевозку лиц, груза и багажа, осуществляемую для его военных властей, на воздушных судах, зарегистрированных в этом государстве-участнике или арендованных им, которые полностью зарезервированы этими властями или от их имени.

В УДОСТОВЕРЕНИЕ ЧЕГО нижеподписавшиеся полномочные представители, должным образом уполномоченные, подписали настоящую Конвенцию.

СОВЕРШЕНО в Монреале 28 дня мая месяца одна тысяча девятьсот девяносто девятого года на русском, английском, арабском, испанском, китайском и французском языках, причем все тексты являются равно аутентичными. Настоящая Конвенция остается на хранении в архивах Международной организации гражданской авиации, а ее заверенные копии направляются депозитарием всем государствам – участникам настоящей Конвенции, а также всем государствам – участникам Варшавской конвенции, Гаагского протокола, Гвадалахарской конвенции, Гватемальского протокола и Монреальских протоколов.

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اتفاقيـــة

توحيد بعض قواعد النقل الجوي الدولي

ان الدول الأطراف في هذه الاتفاقية ،

ادراكا منها لما قدمته اتفاقية توحيد بعض قواعد النقل الجوي الدولي الموقعة في وارسو في الثاني عشر من أكتوبر / تشرين الأول عام ١٩٢٩ - المشار اليها فيما بعد باسم " اتفاقية وارسو" - والوثائق الأخرى المتصلة بها ، من اسهام كبير نحو تحقيق التوافق في أحكام قانون الجو الدولي الخاص .

وادراكا منها للحاجة الى تحديث وتوحيد اتفاقية وارسو والوثائق المتصلة بها .

وادراكا منها لأهمية تأمين حماية مصالح المستهلكين في النقل الجوي الدولي والحاجة الى الحصول على التعويض العادل على أساس مبدأ التعويض عن الضرر .

واذ تؤكد مجددا أنه من المرغوب فيه أن تتطور عمليات النقل الجوي الدولي على نحو منظم وأن تؤمن حركة نقل الركاب والأمتعة والبضائع بدون عوائق ، طبقا لمبادئ وأغراض اتفاقية الطيران المدني الدولي ، المبرمة في شيكاغو في السابع من ديسمبر / كانون الأول عام ١٩٤٤ .

واقتناعا منها بأن اتخاذ تدابير جماعية من قبل الدول لتحقيق مزيد من التوافق والتقنين لبعض القواعد التي تحكم النقل الجوي الدولي من خلال اتفاقية جديدة ، هو الوسيلة الأكثر ملاءمة لتحقيق توازن عادل بين المصالح .

قد اتفقت على ما يلي :

الفصل الأول

أحكام عامة

المادة ١ - نطاق التطبيق

(١) تسري هذه الاتفاقية على كل نقل دولي للأشخاص أو الأمتعة أو البضائع تقوم به طائرة بمقابل . وتسري أيضا على النقل المجاني بطائرة ، الذي تقوم به مؤسسة للنقل الجوي .

(٢) لأغراض هذه الاتفاقية ، تعني عبارة " النقل الدولي " أي نقل تكون فيه نقطتا المغادرة والمقصد النهائي ، وفقا للعقد المبرم بين الأطراف ، واقعتين اما في اقليم دولتين طرفين أو في اقليم دولة واحدة طرف ، سواء كان أو لم

يكن هناك انقطاع للنقل أو كان هناك نقل من طائرة الى أخرى ، وذلك اذا كانت هناك نقطة توقف متفق عليها في اقليم دولة أخرى ، حتى وان لم تكن تلك الدولة طرفا . ولا يعتبر نقلا دوليا لأغراض هذه الاتفاقية النقل بين نقطتين داخل اقليم دولة واحدة طرف بدون نقطة توقف متفق عليها داخل اقليم دولة أخرى .

(٣) لأغراض هذه الاتفاقية ، يعتبر النقل الذي يقوم به عدد من الناقلين المتتابعين نقلا واحدا لا يتجزأ اذا ما اعتبرته الأطراف عملية واحدة ، سواء كان الاتفاق بشأنه قد أبرم في صورة عقد واحد أو سلسلة من العقود ، ولا يفقد صفته الدولية لمجرد وجوب تنفيذ أحد العقود أو سلسلة منها تنفيذا كاملا داخل اقليم نفس الدولة .

(٤) تسري هذه الاتفاقية أيضا على النقل المنصوص عليه في الفصل الخامس ، مع مراعاة الشروط الواردة في ذلك الفصل .

المادة ٢ - النقل الذي تقوم به الدولة ونقل المواد البريدية

(١) تسري هذه الاتفاقية على النقل الذي تقوم به الدولة أو الأشخاص الاعتباريون الآخرون الخاضعون للقانون العام وفقا للشروط المنصوص عليها في المادة ١ .

(٢) عند نقل المواد البريدية ، يكون الناقل مسؤولا فقط تجاه ادارة البريد المختصة طبقا للقواعد التي تنطبق على العلاقة بين الناقلين وادارات البريد .

(٣) فيما عدا ما ورد في الفقرة (٢) من هذه المادة ، لا تسري أحكام هذه الاتفاقية على نقل المواد البريدية .

الفصل الثاني

المستندات وواجبات الأطراف فيما يتعلق بنقل الركاب والأمتعة والبضائع

المادة ٣ - الركاب والأمتعة

(١) في حالة نقل الركاب ، يتعين تسليم مستند نقل فردي أو جماعي يتضمن ما يلي :

(أ) بيان نقطتي المغادرة والمقصد النهائي .

(ب) بيان نقطة واحدة على الأقل من نقاط التوقف ، اذا كانت نقطتا المغادرة والمقصد النهائي واقعتين في اقليم دولة طرف واحدة وذلك اذا كانت هناك نقطة توقف أو نقاط توقف متفق عليها واقعة في اقليم دولة أخرى .

(٢) يجوز الاستعاضة عن تسليم مستند النقل المشار اليه في الفقرة (١) بأي وسيلة أخرى تسجل بها المعلومات المذكورة في تلك الفقرة . واذا استخدمت مثل هذه الوسيلة الأخرى ، فعلى الناقل أن يعرض على الراكب تسليمه بيانا كتابيا بالمعلومات المسجلة بهذه الوسيلة .

(٣) على الناقل أن يسلم الراكب بطاقة تعريف عن كل قطعة من الأمتعة المسجلة .

(٤) يعطى الراكب اشعارا كتابيا يفيد بأنه في الحالات التي تنطبق عليها هذه الاتفاقية فانها تحكم وقد تحد من مسؤولية الناقلين عن الوفاة أو الاصابة ، وعن تلف الأمتعة أو ضياعها أو تعيبها ، وعن التأخير .

(٥) ان عدم الالتزام بأحكام الفقرات السابقة لا يؤثر على وجود أو على صحة عقد النقل ، الذي يظل مع ذلك خاضعا لقواعد هذه الاتفاقية بما فيها القواعد المتعلقة بتحديد المسؤولية .

المادة ٤ - البضائع

(١) في حالة نقل البضائع ، يتعين تسليم وثيقة شحن جوي .

(٢) يجوز الاستعاضة عن تسليم وثيقة الشحن الجوي بأي وسيلة أخرى تتضمن المعلومات المتعلقة بالنقل المطلوب القيام به . وفي حالة استخدام مثل هذه الوسائل الأخرى ، فعلى الناقل أن يسلم المرسل ، بناء على طلب هذا الأخير ، ايصال بضاعة يسمح بالتعرف على الارسالية والاطلاع على المعلومات المسجلة بتلك الوسائل الأخرى .

المادة ٥ - محتويات وثيقة الشحن الجوي أو ايصال البضائع

تتضمن وثيقة الشحن الجوي أو ايصال البضائع ما يلي :

(أ) بيان نقطتي المغادرة والمقصد النهائي .

(ب) بيان نقطة واحدة على الأقل من نقاط التوقف ، اذا كانت نقطتا المغادرة والمقصد النهائي واقعتين في اقليم دولة واحدة طرف وذلك اذا كانت هناك نقطة توقف أو نقاط توقف متفق عليها واقعة في اقليم دولة أخرى .

(ج) بيان وزن الارسالية .

المادة ٦ – الوثيقة المتعلقة بطبيعة البضائع

يجوز الزام المرسل ، عند الضرورة ، بأن يتقيد باجراءات الجمارك والشرطة والسلطات العامة الأخرى ، بتقديم وثيقة تبين طبيعة البضائع . ولا ينشئ هذا الحكم على الناقل أي واجب أو التزام أو مسؤولية ناتجة عنه .

المادة ٧ – وصف وثيقة الشحن الجوي

(١) يقوم المرسل بتحرير وثيقة الشحن الجوي من ثلاث نسخ أصلية .

(٢) تمهر النسخة الأولى بعبارة : " للناقل " ويوقع عليها المرسل . وتمهر النسخة الثانية بعبارة : " للمرسل اليه " ويوقع عليها كل من المرسل والناقل . ويوقع الناقل على النسخة الثالثة ويسلمها الى المرسل بعد قبول البضائع .

(٣) يجوز أن يكون توقيع الناقل وتوقيع المرسل مطبوعين أو أن يستعاض عنهما بخاتم .

(٤) اذا قام الناقل بتحرير وثيقة الشحن الجوي بناء على طلب المرسل ، فيعتبر الناقل متصرفا نيابة عن المرسل ، ما لم يقم الدليل على خلاف ذلك .

المادة ٨ – المستندات المتعلقة بالطرود المتعددة

في حالة تعدد الطرود :

(أ) لناقل البضائع الحق في أن يطالب المرسل بتحرير وثائق شحن جوي منفصلة .

(ب) للمرسل الحق في أن يطالب الناقل بتسليم ايصالات بضائع منفصلة عند استخدام الوسائل الأخرى المشار اليها في الفقرة (٢) من المادة ٤ .

المادة ٩ – عدم الالتزام بالأحكام المتعلقة بالمستندات المطلوبة

ان عدم الالتزام بأحكام المواد من ٤ الى ٨ ، لا يؤثر على وجود أو على صحة عقد النقل ، الذي يظل مع ذلك خاضعا لقواعد هذه الاتفاقية بما فيها القواعد المتعلقة بتحديد المسؤولية .

المادة ١٠ - المسؤولية عن البيانات الواردة في المستندات

(١) يكون المرسل مسؤولا عن صحة البيانات والاقرارات المتعلقة بالبضائع ، المدونة من قبله أو نيابة عنه في وثيقة الشحن الجوي أو المقدمة منه أو نيابة عنه للناقل لتدوينها في ايصال البضائع أو لادراجها في التسجيلات القائمة بالوسائل الأخرى المشار اليها في الفقرة (٢) من المادة ٤ . وتطبق هذه الأحكام أيضا عندما يكون نفس الشخص الذي ينوب عن المرسل وكيلا للناقل أيضا .

(٢) يتحمل المرسل المسؤولية عن جميع الأضرار التي تلحق بالناقل أو بأي شخص آخر يكون الناقل مسؤولا تجاهه ، بسبب ما قدمه أو قدم نيابة عنه من بيانات واقرارات غير سليمة أو غير صحيحة أو غير كاملة .

(٣) مع مراعاة أحكام الفقرتين (١) و (٢) من هذه المادة ، يتحمل الناقل المسؤولية عن جميع الأضرار التي تلحق بالمرسل أو بأي شخص آخر يكون المرسل مسؤولا تجاهه ، بسبب ما دونه الناقل أو ما دوّن نيابة عنه من بيانات واقرارات غير سليمة أو غير صحيحة أو غير كاملة في ايصال البضائع أو في التسجيلات القائمة بالوسائل الأخرى المشار اليها في الفقرة (٢) من المادة ٤ .

المادة ١١ - حجية المستندات

(١) تعتبر وثيقة الشحن الجوي أو ايصال البضائع دليلا على ابرام العقد واستلام البضائع وشروط النقل المذكورة فيهما ، ما لم يثبت خلاف ذلك .

(٢) تكون البيانات المدونة في وثيقة الشحن الجوي أو في ايصال البضائع بشأن وزن البضائع وأبعادها وتغليفها ، وكذلك البيانات المتعلقة بعدد الطرود ، دليلا يحتج به ما لم يثبت خلاف ذلك . أما البيانات المتعلقة بكمية البضائع وحجمها وحالتها فلا تكون لها الحجية ضد الناقل ، الا بقدر ما يكون الناقل قد تحقق منها في حضور المرسل ، وأثبت ذلك في وثيقة الشحن الجوي أو في ايصال البضائع ، أو بقدر ما تكون البيانات متعلقة بالحالة الظاهرة للبضائع .

المادة ١٢ - حق التصرف بالبضائع

(١) يحق للمرسل أن يتصرف بالبضائع ، وذلك اما بسحبها من مطار المغادرة أو مطار المقصد النهائي ، أو بحجزها أثناء الرحلة عند أي هبوط للطائرة ، أو بالمطالبة بتسليمها في مكان المقصد النهائي أو أثناء الرحلة الى شخص آخر غير المرسل اليه المعين أصلا ، أو بالمطالبة باعادتها الى مطار المغادرة ، بشرط قيامه بتنفيذ كافة الالتزامات الناشئة عن عقد النقل . ويجب ألا يمارس المرسل حق التصرف هذا على نحو يعود بالضرر على الناقل أو المرسلين الآخرين ، ويجب عليه أن يتحمل أي مصاريف تترتب على ممارسة هذا الحق .

(٢) على الناقل ، عند استحالة تنفيذ تعليمات المرسل ، أن يخطره بذلك فورا .

(٣) اذا نفذ الناقل تعليمات المرسل بالتصرف بالبضائع ، دون المطالبة بتقديم نسخة وثيقة الشحن الجوي أو ايصال البضائع المسلم الى المرسل ، فان الناقل يكون مسؤولا عن أي ضرر قد يلحق من جراء ذلك بأي شخص تكون بحوزته بصفة قانونية وثيقة الشحن الجوي أو ايصال البضائع ، وذلك مع عدم الاخلال بحق الناقل في الرجوع على المرسل .

(٤) ينتهي حق المرسل اعتبارا من اللحظة التي يبدأ فيها حق المرسل اليه وفقا للمادة ١٣ . غير أنه اذا رفض المرسل اليه تسلم البضائع أو تعذر الاتصال به ، فان المرسل يسترد حقه في التصرف .

المادة ١٣ - تسليم البضائع

(١) ما لم يكن المرسل قد مارس الحق الذي يستمده من المادة ١٢ ، يحق للمرسل اليه ، عند وصول البضائع الى نقطة المقصد ، أن يطالب الناقل بتسليمه البضائع ، اذا ما قام بدفع التكاليف المستحقة وبتنفيذ شروط النقل .

(٢) على الناقل أن يخطر المرسل اليه بمجرد وصول البضائع ، ما لم يتم الاتفاق على خلاف ذلك .

(٣) اذا أقر الناقل بضياع البضائع ، أو اذا لم تكن البضائع قد وصلت بعد انقضاء سبعة أيام على التاريخ الذي كان يجب أن تصل فيه ، يحق للمرسل اليه بأن يطالب الناقل بالحقوق الناشئة عن عقد النقل .

المادة ١٤ - مطالبة المرسل والمرسل اليه بحقوقهما

للمرسل والمرسل اليه أن يطالب كل منهما باسمه الخاص بجميع الحقوق المخولة لهما على التوالي بموجب المادتين ١٢ و ١٣ ، سواء أكان ذلك لمصلحته الذاتية أو لمصلحة الغير ، وذلك بشرط تنفيذه الالتزامات التي يفرضها عقد النقل .

المادة ١٥ - العلاقة بين المرسل والمرسل اليه أو العلاقات المتبادلة بين الغير

(١) لا يترتب على تطبيق المواد ١٢ و ١٣ و ١٤ أي مساس بالعلاقات القائمة بين المرسل والمرسل اليه ، أو بالعلاقات المتبادلة بين الغير الذين يستمدون حقوقهم اما من المرسل واما من المرسل اليه .

(٢) كل اتفاق يتعارض مع أحكام المواد ١٢ و ١٣ و ١٤ ، يجب النص عليه صراحة في وثيقة الشحن الجوي أو في ايصال البضائع .

المادة ١٦ - اجراءات الجمارك أو الشرطة أو السلطات العامة الأخرى

(١) على المرسل أن يقدم المعلومات والوثائق الضرورية لاتمام اجراءات الجمارك والشرطة وأي سلطات عامة أخرى قبل تسليم البضائع الى المرسل اليه . ويكون المرسل مسؤولا في مواجهة الناقل عن أي ضرر ينشأ عن عدم وجود هذه المعلومات أو الوثائق أو عدم كفايتها أو عدم صحتها . وذلك ما لم يكن الضرر عائدا لخطأ الناقل أو تابعيه أو وكلائه .

(٢) ان الناقل غير ملزم بالتثبت من صحة أو كفاية هذه المعلومات أو الوثائق .

الفصل الثالث

مسؤولية الناقل ومدى التعويض عن الضرر

المادة ١٧ - وفاة الراكب أو اصابته - الضرر اللاحق بالأمتعة

(١) يكون الناقل مسؤولا عن الضرر الذي ينشأ في حالة وفاة الراكب أو تعرضه لاصابة جسدية ، بشرط أن تكون الحادثة التي سببت الوفاة أو الاصابة قد وقعت فقط على متن الطائرة أو أثناء أي عملية من عمليات صعود الركاب أو نزولهم .

(٢) يكون الناقل مسؤولا عن الضرر الذي ينشأ في حالة تلف الأمتعة المسجلة أو ضياعها أو تعيبها ، بشرط أن يكون الحدث الذي سبب التلف أو الضياع أو التعيب قد وقع فقط على متن الطائرة أو أثناء أي فترة كانت فيها الأمتعة المسجلة في حراسة الناقل . غير أنه اذا كان الضرر ناجما وبقدر ما يكون ناجما عن خلل كامن في الأمتعة أو عن نوعيتها أو عن عيب ذاتي فيها ، فلا يكون الناقل مسؤولا . وفي حالة الأمتعة غير المسجلة ، بما في ذلك الأمتعة الشخصية ، يكون الناقل مسؤولا اذا كان الضرر ناتجا عن خطئه أو خطأ تابعيه أو وكلائه .

(٣) اذا أقر الناقل بضياع الأمتعة المسجلة ، أو اذا لم تصل الأمتعة المسجلة خلال واحد وعشرين يوما من التاريخ الذي كان يجب وصولها فيه ، يحق للراكب ممارسة الحقوق الناشئة عن عقد النقل في مواجهة الناقل .

(٤) ما لم ينص على خلاف ذلك ، تعني عبارة " الأمتعة " في هذه الاتفاقية كلا من الأمتعة المسجلة والأمتعة غير المسجلة .

المادة ١٨ - الضرر اللاحق بالبضائع

(١) يكون الناقل مسؤولا عن الضرر الذي ينشأ في حالة تلف البضائع أو ضياعها أو تعيبها بشرط أن يكون الحدث الذي ألحق الضرر على هذا النحو قد وقع فقط خلال النقل الجوي .

(٢) غير أن الناقل لا يكون مسؤولا اذا أثبت وبقدر ما يثبت أن تلف البضائع أو ضياعها أو تعيبها قد نتج عن سبب أو أكثر من الأسباب التالية :

(أ) وجود خلل كامن في تلك البضائع أو بسبب نوعيتها أو وجود عيب ذاتي فيها .

(ب) سوء تغليف البضائع من جانب شخص غير الناقل أو تابعيه أو وكلائه .

(ج) عمل من أعمال الحرب أو نزاع مسلح .

(د) اجراءات اتخذتها السلطة العمومية بشأن دخول البضائع أو خروجها أو عبورها .

(٣) في مفهوم الفقرة (١) من هذه المادة ، يشمل النقل الجوي المدة التي تكون خلالها البضائع في حراسة الناقل .

(٤) لا تشمل مدة النقل الجوي أي نقل بري أو نقل بحري أو نقل في مجار مائية خارج المطار . غير أنه اذا حدث مثل هذا النقل تنفيذا لعقد نقل جوي بغرض التحميل أو التسليم أو النقل من مركبة الى أخرى ، فيفترض أن الضرر قد نجم عن حدث وقع أثناء النقل الجوي ، ما لم يقم الدليل على عكس ذلك . واذا قام الناقل ، بدون موافقة المرسل ، باستبدال واسطة النقل بواسطة نقل أخرى ، فيما يتعلق بالنقل كليا أو جزئيا الذي يتناوله الاتفاق بين الأطراف باعتباره نقلا جويا ، فان النقل بتلك الواسطة الأخرى يعتبر أنه تم ضمن مدة النقل الجوي .

المادة ١٩ - التأخير

يكون الناقل مسؤولا عن الضرر الذي ينشأ عن التأخير في نقل الركاب أو الأمتعة أو البضائع بطريق الجو . غير أن الناقل لا يكون مسؤولا عن الضرر الذي ينشأ عن التأخير اذا أثبت أنه اتخذ هو وتابعوه ووكلاؤه كافة التدابير المعقولة اللازمة لتفادي الضرر أو أنه استحال عليه أو عليهم اتخاذ مثل هذه التدابير .

المادة ٢٠ - الاعفاء من المسؤولية

اذا أثبت الناقل أن الضرر قد نجم عن ، أو أسهم في حدوثه ، اهمال أو خطأ أو امتناع الشخص المطالب بالتعويض ، أو الشخص الذي يستمد منه حقوقه ، يعفى الناقل كليا أو جزئيا من مسؤوليته تجاه المطالب بقدر ما يكون هذا الاهمال أو الخطأ أو الامتناع قد سبب الضرر أو أسهم في حدوثه . واذا تقدم بطلب التعويض عن وفاة الراكب أو اصابته شخص آخر غير الراكب ، يعفى الناقل كذلك كليا أو جزئيا من مسؤوليته بقدر ما يثبت أن حدوث الضرر أو الاسهام في حدوثه قد حصل نتيجة اهمال أو خطأ أو امتناع هذا الراكب . وتنطبق هذه المادة على جميع أحكام المسؤولية في هذه الاتفاقية ، بما في ذلك الفقرة (١) من المادة ٢١ .

المادة ٢١ - التعويض في حالة وفاة الراكب أو اصابته

(١) فيما يتعلق بالأضرار المنصوص عليها في الفقرة (١) من المادة ١٧ والتي لا تتجاوز قيمتها ١٠٠ ٠٠٠ وحدة حقوق سحب خاصة عن كل راكب ، لا يجوز للناقل أن ينفي مسؤوليته أو أن يحد منها .

(٢) فيما يتعلق بالأضرار المنصوص عليها في الفقرة (١) من المادة ١٧ والتي تتجاوز قيمتها ١٠٠ ٠٠٠ وحدة حقوق سحب خاصة عن كل راكب ، لا يكون الناقل مسؤولا اذا أثبت ما يلي :

(أ) أن هذا الضرر لم ينشأ عن الاهمال أو الخطأ أو الامتناع من جانب الناقل أو تابعيه أو وكلائه ،

(ب) أو أن هذا الضرر نشأ فقط عن الاهمال أو الخطأ أو الامتناع من جانب الغير .

المادة ٢٢ حدود المسؤولية فيما يتعلق بالتأخير والأمتعة والبضائع

(١) في حالة الضرر الناتج عن التأخير في نقل الركاب كما هو مبين في المادة ١٩ ، تكون مسؤولية الناقل محدودة بمبلغ ٤ ١٥٠ وحدة حقوق سحب خاصة عن كل راكب .

(٢) عند نقل الأمتعة ، تكون مسؤولية الناقل في حالة تلفها أو ضياعها أو تعيبها أو تأخيرها ، محدودة بمبلغ ١ ٠٠٠ وحدة حقوق سحب خاصة عن كل راكب ما لم يقم الراكب ، عند تسليم الأمتعة المسجلة الى الناقل ، بتقديم بيان خاص يوضح فيه مصلحته في تسليمها عند نقطة المقصد ، وبدفع مبلغ اضافي اذا اقتضى الأمر ذلك . وفي هذه الحالة ، يكون الناقل ملزما بدفع مبلغ لا يتجاوز المبلغ المعلن ، الا اذا أثبت أن هذا المبلغ يفوق مصلحة الراكب الفعلية في استلام الأمتعة عند نقطة المقصد .

(٣) عند نقل البضائع ، تكون مسؤولية الناقل في حالة تلفها أو ضياعها أو تعيبها أو تأخيرها ، محدودة بمبلغ ١٧ وحدة حقوق سحب خاصة عن كل كيلوغرام ، ما لم يقم المرسل ، عند تسليم الطرد الى الناقل ، بتقديم بيان خاص يوضح فيه مصلحته في تسليمه عند نقطة المقصد ، وبدفع مبلغ اضافي اذا اقتضى الأمر ذلك . وفي هذه الحالة ، يكون الناقل ملزما بدفع مبلغ لا يتجاوز المبلغ المعلن ، الا اذا أثبت أن هذا المبلغ يفوق مصلحة المرسل الفعلية في استلام الطرد عند نقطة المقصد .

(٤) في حالة تلف أو ضياع أو تعيب أو تأخير جزء من البضائع أو أي شيء مما تتضمنه ، يكون الوزن الكلي للطرد أو الطرود المتعلق بها الأمر هو وحده المعول عليه لتعيين حد مسؤولية الناقل . غير أنه ، اذا كان التلف أو الضياع أو التعيب أو التأخير الذي يلحق بجزء من البضائع أو بأي شيء مما تتضمنه ، أمرا يؤثر على قيمة طرود أخرى تغطيها وثيقة الشحن الجوي ذاتها ، أو الايصال ذاته أو ، في حالة عدم اصدارهما ، البيانات المسجلة بالوسائل الأخرى المشار اليها في الفقرة (٢) من المادة ٤ ، فان الوزن الكلي لهذا الطرد أو الطرود يجب أن يؤخذ في الاعتبار أيضا عند تعيين حد المسؤولية .

(٥) لا تسري الأحكام الواردة أعلاه في الفقرتين (١) و (٢) من هذه المادة ، اذا ثبت أن الضرر قد نتج عن فعل أو امتناع من جانب الناقل أو تابعيه أو وكلائه ، بقصد احداث ضرر أو برعونة مقرونة بادراك أن ضررا سينجم عن ذلك في الغالب . ويشترط أيضا ، في حالة وقوع الفعل أو الامتناع من أحد التابعين أو الوكلاء ، اثبات أن هذا التابع أو الوكيل كان يتصرف في نطاق ممارسته لوظيفته .

(٦) ان الحدود المقررة في المادة ٢١ وفي هذه المادة ، لا تمنع المحكمة من أن تقضي - بالاضافة الى ذلك - وفقا لقانونها ، بمبلغ يوازي كل أو بعض تكاليف الدعوى ونفقات التقاضي الأخرى التي تكبدها المدعي ، بما فيها الفوائد . ولا يسري حكم هذا النص اذا كان مبلغ التعويض المحكوم به ، ما عدا تكاليف الدعوى ونفقات التقاضي الأخرى ، لا يزيد عن المبلغ الذي عرضه الناقل كتابيا على المدعي ، خلال مدة ستة أشهر من تاريخ الحدث الذي سبب الضرر ، أو قبل رفع الدعوى اذا رفعت في تاريخ لاحق لتلك المدة .

المادة ٢٣ - تحويل الوحدات النقدية

(١) ان المبالغ المبينة في شكل وحدات حقوق السحب الخاصة في هذه الاتفاقية تشير الى وحدة حقوق السحب الخاصة حسب تعريف صندوق النقد الدولي . ويتم تحويل هذه المبالغ الى العملات الوطنية ، عند التقاضي ، وفقا لقيمة تلك العملات مقومة بوحدات حقوق السحب الخاصة يوم صدور الحكم . وتحسب قيمة العملة الوطنية لدولة طرف عضو في صندوق النقد الدولي مقومة بوحدات حقوق السحب الخاصة ، وفقا لطريقة التقويم التي يطبقها صندوق النقد الدولي بالنسبة لعملياته ومعاملاته السارية يوم صدور الحكم . وتحسب قيمة العملة الوطنية بوحدات حقوق السحب الخاصة لدولة طرف ليست عضوا في صندوق النقد الدولي ، وفقا للطريقة التي تحددها هذه الدولة .

(٢) غير أن الدول التي ليست أعضاء في صندوق النقد الدولي والتي لا تسمح قوانينها بتطبيق أحكام الفقرة (١) من هذه المادة يجوز لها ، عند التصديق أو الانضمام أو في أي وقت لاحق ، أن تعلن أن مسؤولية الناقل المنصوص عليها في المادة ٢١ محدودة بمبلغ ١ ٥٠٠ ٠٠٠ وحدة نقدية عن كل راكب ، عند التقاضي داخل أقاليمها ، وبمبلغ ٦٢ ٥٠٠ وحدة نقدية عن كل راكب بالنسبة للفقرة (١) من المادة ٢٢ ، وبمبلغ ١٥ ٠٠٠ وحدة نقدية عن كل راكب بالنسبة للفقرة (٢) من المادة ٢٢ ، وبمبلغ ٢٥٠ وحدة نقدية عن كل كيلوغرام بالنسبة للفقرة (٣) من المادة ٢٢ . وهذه الوحدة النقدية تعادل خمسة وستين مليجراما ونصفا من الذهب بنسبة نقاء تبلغ تسعمائة في الألف . ويجوز تحويل هذه المبالغ الى العملة الوطنية المعنية بأرقام مجبورة الكسور . ويتم تحويل هذه المبالغ الى العملة الوطنية طبقا لقانون الدولة المعنية .

(٣) يجب اجراء الحساب المذكور في الجملة الأخيرة من الفقرة (١) من هذه المادة وأسلوب التحويل المذكور في الفقرة (٢) من هذه المادة بطريقة تعبر الى أبعد حد ممكن بالعملة الوطنية للدولة الطرف عن نفس القيمة الحقيقية للمبالغ الواردة في المادتين ٢١ و ٢٢ ، التي تنجم عن تطبيق الجمل الثلاث الأولى من الفقرة (١) من هذه المادة . ويجب على الدول الأطراف أن تبلغ جهة الايداع بطريقة الحساب طبقا للفقرة (١) من هذه المادة ، أو بنتيجة التحويل المنصوص عليه في الفقرة (٢) من هذه المادة حسب الحالة ، وذلك عند ايداع وثيقة التصديق أو القبول أو الموافقة أو الانضمام لهذه الاتفاقية وعند اجراء أي تغيير في طريقة الحساب أو نتائجه .

المادة ٢٤ - مراجعة حدود المسؤولية

(١) دون الاخلال بأحكام المادة ٢٥ من هذه الاتفاقية ومع مراعاة الفقرة (٢) أدناه ، يجب مراجعة حدود المسؤولية المحددة في المواد ٢١ و ٢٢ و ٢٣ من جانب جهة الايداع مرة كل خمس سنوات ، على أن تتم أول مراجعة في نهاية السنة الخامسة بعد تاريخ سريان هذه الاتفاقية ، أو اذا لم تسر الاتفاقية خلال خمس سنوات من تاريخ فتح باب التوقيع عليها ، خلال السنة الأولى لسريانها ، مع استخدام عامل تضخم مطابق لمعدل التضخم المتراكم منذ المراجعة السابقة ، أو في المرة الأولى منذ تاريخ سريان الاتفاقية . ويجب أن يكون مقياس معدل التضخم المستخدم في تحديد عامل التضخم هو المتوسط المرجح للمعدلات السنوية للزيادة أو النقصان في الأرقام القياسية لأسعار الاستهلاك في الدول التي تشكل عملاتها وحدة حقوق السحب الخاصة المذكورة في الفقرة (١) من المادة ٢٣ .

(٢) اذا تبين من المراجعة المشار اليها في الفقرة السابقة أن عامل التضخم قد تجاوز ١٠ في المائة ، فعلى جهة الايداع أن تخطر الدول الأطراف بتعديل حدود المسؤولية . ويصبح هذا التعديل ساريا بعد ستة أشهر من تاريخ ابلاغه للدول الأطراف . واذا سجلت أغلبية من الدول الأطراف عدم موافقتها ، في غضون ثلاثة أشهر من تاريخ الاخطار ، لا يسرى التعديل ، وتحيل جهة الايداع الأمر الى اجتماع للدول الأطراف . وعلى جهة الايداع أن تخطر فورا جميع الدول الأطراف بسريان أي تعديل .

(٣) بالرغم من نص الفقرة (١) من هذه المادة ، يطبق الاجراء المشار اليه في الفقرة (٢) من هذه المادة ، في أي وقت ، شريطة أن تعرب ثلث الدول الأطراف عن رغبتها في ذلك وبشرط أن يكون عامل التضخم المشار اليه في الفقرة (١) قد تجاوز ٣٠ في المائة منذ المراجعة السابقة أو منذ تاريخ سريان هذه الاتفاقية اذا لم يحدث تعديل سابق . وتجرى المراجعات اللاحقة باتباع الاجراء المذكور في الفقرة (١) من هذه المادة مرة كل خمس سنوات ابتداء من نهاية السنة الخامسة بعد تاريخ المراجعات بموجب الفقرة الحالية .

المادة ٢٥ - اشتراط حدود المسؤولية

يجوز للناقل أن يشترط خضوع عقد النقل لحدود مسؤولية أعلى من الحدود المنصوص عليها في هذه الاتفاقية أو أنه لا يخضع لأي حدود للمسؤولية .

المادة ٢٦ - بطلان الأحكام التعاقدية

كل بند يهدف الى اعفاء الناقل من مسؤوليته أو الى وضع حد أدنى من الحد المعين في هذه الاتفاقية يكون باطلا ولاغيا ، ولكن بطلان هذا البند لا يترتب عليه بطلان العقد بأكمله ، الذي يظل خاضعا لأحكام هذه الاتفاقية .

المادة ٢٧ - حرية التعاقد

ليس في هذه الاتفاقية ما يمنع الناقل من رفض ابرام أي عقد للنقل ، أو من التنازل عن أي أسباب دفاع متاحة بموجب الاتفاقية ، أو من وضع شروط لا تتعارض مع أحكام هذه الاتفاقية .

المادة ٢٨ - المدفوعات المسبقة

في حالة حوادث الطائرات التي ينتج عنها وفاة ركاب أو اصابتهم ، على الناقل أن يدفع دون ابطاء ، اذا كان ملزما بموجب قانونه الوطني ، مبالغ مسبقة الى الشخص الطبيعي أو الأشخاص الطبيعيين الذين يحق لهم أن يطالبوا بالتعويض لتلبية احتياجاتهم الاقتصادية العاجلة . ولا تشكل هذه المبالغ اعترافا بالمسؤولية ويجوز حسمها من أي مبالغ يدفعها الناقل كتعويض في وقت لاحق .

المادة ٢٩ - أساس المطالبات

في حالة نقل الركاب والأمتعة والبضائع ، لا يجوز رفع أي دعوى للتعويض ، مهما كان سندها ، سواء بمقتضى هذه الاتفاقية أو بناء على عقد أو بسبب عمل غير مشروع أو لأي سبب آخر ، الا وفقا لشروط وحدود المسؤولية المقررة في هذه الاتفاقية ، دون المساس بمسألة تحديد الأشخاص الذين لهم حق المقاضاة وبحقوق كل منهم . ولا يمكن المطالبة في أي دعوى كهذه بأي تعويضات جزائية أو رادعة أو أي تعويضات تخرج عن نطاق التعويض عن الضرر .

المادة ٣٠ - التابعون والوكلاء - مجموع المطالبات

(١) اذا رفعت دعوى على تابع أو وكيل للناقل بسبب ضرر مشار اليه في هذه الاتفاقية ، فلهذا التابع أو الوكيل ، اذا ما أثبت أنه تصرف في نطاق ممارسته لوظيفته ، الحق في الاستفادة من شروط وحدود المسؤولية التي يحق للناقل ذاته الاستناد اليها بمقتضى هذه الاتفاقية .

(٢) يجب ألا يتجاوز مجموع التعويضات التي يمكن الحصول عليها في هذه الحالة من الناقل وتابعيه ووكلائه الحدود المشار اليها .

(٣) فيما عدا ما يتعلق بنقل البضائع ، لا تسري أحكام الفقرتين (١) و (٢) من هذه المادة اذا ثبت أن الضرر قد نتج عن فعل أو امتناع من قبل التابع أو الوكيل بقصد احداث ضرر ، أو برعونة مقرونة بادراك أن ضررا سينجم عن ذلك في الغالب .

المادة ٣١ - آجال الاحتجاج

(١) يعتبر تسلم المرسل اليه الأمتعة المسجلة أو البضائع دون احتجاج ، ما لم يثبت العكس ، قرينة على أنها سلمت في حالة جيدة ووفقا لمستند النقل أو للمعلومات المحددة في الوسائل الأخرى المشار اليها في الفقرة (٢) من المادة ٣ ، وفي الفقرة (٢) من المادة ٤ .

(٢) في حالة التعيب ، يجب على المرسل اليه أن يوجه احتجاجا الى الناقل فور اكتشاف التعيب ، وعلى الأكثر ، خلال سبعة أيام بالنسبة للأمتعة المسجلة وأربعة عشر يوما بالنسبة للبضائع ، اعتبارا من تاريخ تسلمها . وفي حالة التأخير ، يجب عليه تقديم الاحتجاج خلال واحد وعشرين يوما على الأكثر من التاريخ الذي تكون فيه الأمتعة أو البضائع قد وضعت تحت تصرفه .

(٣) يجب أن يقدم كل احتجاج كتابيا ويعطى أو يرسل في غضون المواعيد المحددة آنفا لهذا الاحتجاج .

(٤) اذا لم يقدم الاحتجاج خلال الآجال المحددة آنفا ، فلا تقبل أي دعوى ضد الناقل الا في حالة الغش من جانبه .

المادة ٣٢ - وفاة الشخص المسؤول

في حالة وفاة الشخص الذي تقع عليه المسؤولية ، يجوز أن تقام دعوى التعويض ، وفقا لأحكام هذه الاتفاقية ، ضد أصحاب الحقوق الشرعيين في تركته .

المادة ٣٣ - الاختصاص القضائي

(١) تقام دعوى التعويض ، وفقا لاختيار المدعي ، في اقليم احدى الدول الأطراف ، اما أمام محكمة محل اقامة الناقل ، أو أمام محكمة مركز أعماله الرئيسي ، أو أمام محكمة المكان الذي لديه فيه مركز أعمال تم بواسطته ابرام العقد ، أو أمام محكمة مكان نقطة المقصد .

(٢) فيما يتعلق بالضرر الناجم عن وفاة الراكب أو اصابته ، يجوز رفع الدعوى أمام احدى المحاكم المذكورة في الفقرة (١) من هذه المادة ، أو في اقليم احدى الدول الأطراف الذي يوجد فيه محل الاقامة الرئيسي والدائم للراكب في وقت وقوع الحادثة والذي يشغل الناقل اليه ومنه خطوطا لنقل الركاب جوا ، اما على متن طائراته الخاصة أو على متن طائرات ناقل آخر طبقا لاتفاق تجاري ، ويزاول فيه ذلك الناقل الأول أعماله لنقل الركاب جوا من مبان يستأجرها أو يملكها الناقل ذاته أو ناقل آخر يرتبط معه باتفاق تجاري .

(٣) لأغراض الفقرة (٢) ،

(أ) تعني عبارة " اتفاق تجاري " أي اتفاق ، بخلاف اتفاق الوكالة ، معقود بين الناقلين الجويين ويتعلق بتقديم خدماتهم المشتركة لنقل الركاب جوا .

(ب) تعني عبارة " محل الاقامة الرئيسي والدائم " مكان السكن الأوحد الثابت والدائم للراكب في وقت وقوع الحادثة . ولا تعتبر جنسية الراكب العامل الحاسم في هذا الصدد .

(٤) تخضع المسائل الاجرائية لقانون المحكمة التي رفعت أمامها الدعوى .

المادة ٣٤ - التحكيم

(١) مع مراعاة أحكام هذه المادة ، يجوز أن يشترط الطرفان في عقد نقل البضائع أن أي خلاف يتعلق بمسؤولية الناقل بمقتضى هذه الاتفاقية يسوى بالتحكيم . ويجب أن يكون مثل هذا الاتفاق كتابيا .

(٢) تتم اجراءات التحكيم ، وفقا لاختيار صاحب المطالبة ، في احدى جهات الاختصاص القضائي المشار اليها في المادة ٣٣ .

(٣) يُطبق المحكم أو هيئة التحكيم أحكام هذه الاتفاقية .

(٤) تعتبر أحكام الفقرتين (٢) و (٣) من هذه المادة جزءا من كل بند أو اتفاق خاص بالتحكيم ، ويكون باطلا وبدون أثر أي نص مخالف لهما في بند أو اتفاق التحكيم .

المادة ٣٥ - تقادم الدعاوى

(١) يسقط الحق في التعويض اذا لم ترفع الدعوى خلال سنتين من تاريخ الوصول الى نقطة المقصد أو من التاريخ الذي كان يجب أن تصل فيه الطائرة ، أو من التاريخ الذي توقفت فيه عملية النقل .

(٢) يحدد قانون المحكمة التي رفعت أمامها الدعوى طريقة حساب هذه المدة .

المادة ٣٦ – النقل المتتابع

(١) في حالة النقل الذي يقوم به عدد من الناقلين المتتابعين المختلفين والذي يدخل في مضمون التعريف الوارد بالفقرة (٣) من المادة ١ ، فان كل ناقل يقبل ركابا أو أمتعة أو بضائع ، تسري عليه القواعد المقررة في هذه الاتفاقية ، ويعتبر طرفا من أطراف عقد النقل ، بقدر ما يكون ذلك العقد متعلقا بمرحلة النقل التي جرت تحت اشرافه .

(٢) في حالة النقل من هذا النوع ، لا يحق للراكب أو لأي شخص يستمد منه حقه في التعويض ، الرجوع الا على الناقل الذي تولى النقل الذي وقع خلاله الحادث أو التأخير ، ما لم يكن الناقل الأول قد أخذ على عاتقه المسؤولية عن الرحلة بأكملها ، بموجب اتفاق صريح .

(٣) فيما يتعلق بالأمتعة أو البضائع ، يحق للراكب أو للمرسل الرجوع على الناقل الأول ، كما يحق للراكب أو المرسل اليه صاحب الحق في الاستلام الرجوع على الناقل الأخير ، وفضلا عن ذلك ، لكل من الراكب والمرسل والمرسل اليه الحق في الرجوع على الناقل الذي تولى مرحلة النقل التي وقع خلالها التلف أو الضياع أو التعيب أو التأخير . ويكون هؤلاء الناقلون مسؤولين بالتضامن تجاه الراكب أو المرسل أو المرسل اليه .

المادة ٣٧ – حق الرجوع على الغير

ليس في أحكام هذه الاتفاقية ما يؤثر بأي صورة على ما قد يكون أو لا يكون للشخص المسؤول عن الضرر وفقا لأحكامها من حق في الرجوع على أي شخص آخر .

الفصل الرابع

النقل بعدة وسائط

المادة ٣٨ – النقل بعدة وسائط

(١) في حالة النقل بعدة وسائط الذي يجرى جزء منه بطريق الجو وجزء آخر منه بأي واسطة نقل أخرى ، تسري أحكام هذه الاتفاقية ، مع مراعاة أحكام الفقرة (٤) من المادة ١٨ ، على النقل الجوي فقط على أن تتوافر فيه الشروط المنصوص عليها في المادة ١ .

(٢) ليس في هذه الاتفاقية ما يمنع الأطراف في حالة النقل بعدة وسائط ، من تضمين وثيقة النقل الجوي شروطا تتعلق بوسائط نقل أخرى ، بشرط مراعاة أحكام هذه الاتفاقية فيما يتعلق بالنقل الجوي .

الفصل الخامس

النقل الجوي الذي يقوم به شخص غير الناقل المتعاقد

المادة ٣٩ - الناقل المتعاقد - الناقل الفعلي

تنطبق أحكام هذا الفصل عندما يبرم شخص (يشار اليه فيما يلى بعبارة " الناقل المتعـــاقد ") بصفتـــه طرفـــا أساسيا ، عقد نقل يخضع لأحكام هذه الاتفاقية مع راكب أو مرسل أو مع شخص يعمل بالنيابة عن الراكب أو المرســـل ، ويقوم شخص آخر (يشـــار اليه فيما يلى بعبارة " الناقل الفعلي ") ، بمقتضى ترخيص من الناقل المتعاقد ، بكل أو بجـــزء من النقل ، دون أن يكون بالنسبة لهذا الجزء ناقلا متتابعا في مفهوم هذه الاتفاقية . ويكون هذا الترخيص مفترضا ، مـــا لم يقم الدليل على عكس ذلك .

المادة ٤٠ - مسؤولية كل من الناقل المتعاقد والناقل الفعلي

اذا قام ناقل فعلى بكل أو بجزء مـــن النقل الذي يخضع لأحكام هـــذه الاتفاقية ، وفقا للعقد المشار اليـــه فـــي المادة ٣٩ ، فان الناقل المتعاقد والناقـــل الفعلي يكون كلاهما ، ما لم ينص على غير ذلك في هذا الفصل ، خاضعا لأحكام هذه الاتفاقية ، الأول بالنسبة لمجمل عملية النقل موضوع العقد ، والثاني بالنسبة للنقـــل الذي يقوم به فقط .

المادة ٤١ - المسؤولية التضامنية

(١) الأفعال والامتناع من قبل الناقل الفعلي أو تابعيه ووكلائه في نطاق ممارستهم لوظائفهم ، تعتبر أيضا - فيمـــا يتعلق بالنقل الذي يقوم به الناقل الفعلي - أفعالا وامتناعا من قبل الناقل المتعاقد .

(٢) الأفعال والامتناع من قبل الناقل المتعاقد أو تابعيه ووكلائه في نطاق ممارستهم لوظائفهم ، تعتبر أيضا - فيما يتعلق بالنقل الذي يقوم به الناقل الفعلي - أفعالا وامتناعا من قبل الناقل الفعلي . ومع ذلك فان أي من هـــذه الأفعـــال أو الامتناع لا يخضع الناقل الفعلي لمسؤولية تتجاوز المبالغ المشار اليها في المواد ٢١ و ٢٢ و ٢٣ و ٢٤ . وأي اتفـــاق خاص يتحمل الناقل المتعاقد بمقتضاه التزامات لا تفرضها هذه الاتفاقية ، وأي تنازل عن حقوق أو أوجه دفـــاع تمنحـــها هذه الاتفاقية ، وأي اقرار خاص بوجود مصلحة في التسليم الى الجهة المقصودة وفقا للمادة ٢٢ ، لا يؤثر على النـــاقل الفعلي الا بموافقته .

المادة ٤٢ - توجيه الاحتجاجات والتعليمات

يكون للاحتجاجات والتعليمات التي توجه الى الناقل وفقا لأحكام هذه الاتفاقية نفس الأثر سواء وجهت للناقل المتعاقد أو للناقل الفعلي . ومع ذلك ، فان التعليمات المشار اليها في المادة ١٢ لا يكون لها أثر الا اذا وجهت للناقل المتعاقد .

المادة ٤٣ - التابعون والوكلاء

فيما يتعلق بالنقل الذي يقوم به الناقل الفعلي ، فان كل تابع أو وكيل لهذا الناقل أو للناقل المتعاقد ، اذا ما أثبت أنه قد تصرف في نطاق ممارسته لوظيفته ، يحق له الاستفادة من شروط وحدود المسؤولية المقررة بمقتضى هذه الاتفاقية للناقل الذي يتبعه أو يعمل وكيلا له ، الا اذا ثبت أنه تصرف بطريقة تحول دون الاستناد الى حدود المسؤولية وفقا لهذه الاتفاقية .

المادة ٤٤ - مجموع مبالغ التعويض

فيما يتعلق بالنقل الذي يقوم به الناقل الفعلي ، فان مجموع مبالغ التعويض التي يجوز الحصول عليها من هذا الناقل ومن الناقل المتعاقد ومن تابعيهما ووكلائهما اذا كانوا قد تصرفوا في نطاق ممارستهم لوظائفهم ، لا يجوز أن يزيد عن أقصى تعويض يمكن فرضه على الناقل المتعاقد أو على الناقل الفعلي بمقتضى هذا الاتفاقية ، على أن المسؤولية التي تلقى على عاتق أي من الأشخاص المذكورين في هذه المادة لا يجوز أن تتعدى الحد الذي ينطبق عليه .

المادة ٤٥ - توجيه دعاوى التعويض

فيما يتعلق بالنقل الذي يقوم به الناقل الفعلي ، يجوز اقامة دعوى التعويض ، حسب اختيار المدعي ، اما على ذلك الناقل أو على الناقل المتعاقد ، أو عليهما معا متضامنين أو منفردين . واذا أقيمت الدعوى ضد واحد فقط من هذين الناقلين ، يحق لذلك الناقل أن يطلب ادخال الناقل الآخر في الدعوى ، على أن تخضع الاجراءات والآثار المترتبة على ذلك لقانون المحكمة التي تتولى نظر الدعوى .

المادة ٤٦ - الاختصاص القضائي الاضافي

تقام أي دعوى للتعويض بموجب المادة ٤٥ ، حسب اختيار المدعي ، في اقليم احدى الدول الأطراف ، اما أمام احدى المحاكم التي يمكن أن ترفع أمامها الدعوى على الناقل المتعاقد وفقا للمادة ٣٣ ، أو أمام المحكمة ذات الاختصاص في المكان الذي يوجد فيه محل اقامة الناقل الفعلي أو محكمة المركز الرئيسي لأعماله .

المادة ٤٧ - بطلان النصوص التعاقدية

كل نص تعاقدي يهدف الى اعفاء الناقل المتعاقد أو الناقل الفعلي من مسؤوليتهما الناشئة بموجب هذا الفصل ، أو الى وضع حد أدنى من الحد المعين في هذا الفصل يكون باطلا ولا أثر له ، ولكن بطلان هذا النص لا يترتب عليه بطلان العقد بأكمله ، فيظل خاضعا لأحكام هذا الفصل .

المادة ٤٨ - العلاقات المتبادلة بين الناقل المتعاقد والناقل الفعلي

مع مراعاة أحكام المادة ٤٥ ، لا يجوز تفسير أي نص في هذا الفصل على نحو يمس الحقوق والالتزامات القائمة بين الناقلين ، بما في ذلك أي حق في الرجوع أو التعويض .

الفصل السادس

أحكام أخرى

المادة ٤٩ - التطبيق الالزامي

تكون باطلة ولاغية كل أحكام في عقد النقل وكل اتفاقيات خاصة سابقة لوقوع الضرر ، يخالف بها الأطراف القواعد المنصوص عليها في هذه الاتفاقية ، سواء أكان ذلك بتعيين القانون الواجب التطبيق ، أم بتعديل قواعد الاختصاص .

المادة ٥٠ - التأمين

على الدول الأطراف أن تطلب من ناقليها أن يحتفظوا بقدر كاف من التأمين يغطي مسؤوليتهم بموجب هذه الاتفاقية . ويجوز للدولة الطرف التي ينظم الناقل رحلات الى داخلها أن تطلب منه تقديم دليل على أنه يحتفظ بقدر كاف من التأمين يغطي مسؤوليته بموجب هذه الاتفاقية .

المادة ٥١ - النقل الذي يتم في ظروف غير عادية

لا تسري أحكام المواد من ٣ الى ٥ و ٧ و ٨ ، المتعلقة بوثائق النقل ، على النقل الذي يتم في ظروف غير عادية ، تخرج عن النطاق المألوف لنشاط الناقل .

المادة ٥٢ - تعريف الأيام

يعني تعبير " الأيام " حينما ذكر في هذه الاتفاقية الأيام التقويمية وليس أيام العمل .

الفصل السابع

البنود الختامية

المادة ٥٣ - التوقيع على الاتفاقية والتصديق عليها وسريان مفعولها

(١) يفتح باب التوقيع على هذه الاتفاقية في مونتريال في ٢٨ مايو/أيار ١٩٩٩ للدول المشاركة في المؤتمر الدولي للقانون الجوي المنعقد في مونتريال من ١٠ الى ٢٨ مايو/أيار ١٩٩٩ . وبعد ٢٨ مايو/أيار ١٩٩٩ ، يفتح باب التوقيع على الاتفاقية لكل الدول في مقر منظمة الطيران المدني الدولي في مونتريال حتى يسري مفعولها وفقا للفقرة ٦ من هذه المادة .

(٢) وبالمثل يفتح باب التوقيع على هذه الاتفاقية لمنظمات التكامل الاقتصادي الاقليمي . ولأغراض هذه الاتفاقية ، تعني " منظمة التكامل الاقتصادي الاقليمي " أي منظمة تنشئها دول ذات سيادة من اقليم معين ، والتي تمتلك الصلاحية بالعلاقة الى بعض الأمور التي تحكمها هذه الاتفاقية والتي رخص لها على النحو الواجب بالتوقيع على هذه الاتفاقية أو التصديق عليها أو قبولها أو الموافقة عليها أو الانضمام اليها . والاشارة الى " الدولة الطرف " أو " الدول الأطراف " في هذه الاتفاقية ، بخلاف ما هو وارد في الفقرة (٢) من المادة ١ والفقرة (١) (ب) من المادة ٣ والفقرة (ب) من المادة ٥ والمواد ٢٣ و ٣٣ و ٤٦ والفقرة (ب) من المادة ٥٧ ، تنطبق بالمثل على منظمة للتكامل الاقتصادي الاقليمي . ولأغراض المادة ٢٤ ، فان الاشارة الى " أغلبية من الدول الأطراف " والى " ثلث الدول الأطراف " ، لا تنطبق على منظمة للتكامل الاقتصادي الاقليمي .

(٣) تخضع هذه الاتفاقية للتصديق عليها من قبل الدول ومنظمات التكامل الاقتصادي الاقليمي التي وقعت عليها .

(٤) لأي دولة أو منظمة للتكامل الاقتصادي الاقليمي لم توقع على هذه الاتفاقية أن تقبلها أو توافق عليها أو تنضم اليها في أي وقت .

(٥) تودع وثائق التصديق أو القبول أو الموافقة أو الانضمام لدى منظمة الطيران المدني الدولي المعينة بوصفها جهة الايداع بموجب هذه الاتفاقية .

(٦) يسري مفعول هذه الاتفاقية اعتبارا من اليوم الستين اللاحق لايداع الوثيقة الثلاثين للتصديق أو القبول أو الموافقة أو الانضمام لدى جهة الايداع - وذلك فيما بين الدول التي أودعت مثل هذه الوثائق . ولا تحسب لأغراض هذه الفقرة الوثيقة التي تودعها منظمة للتكامل الاقتصادي الاقليمي .

(٧) بالنسبة للدول الأخرى وبالنسبة لمنظمات التكامل الاقتصادي الاقليمي الأخرى ، يسري مفعول هذه الاتفاقية اعتبارا من اليوم الستين اللاحق لايداع وثيقة التصديق أو القبول أو الموافقة أو الانضمام .

(٨) تخطر جهة الايداع على وجه السرعة كل الأطراف الموقعة والدول الأطراف بما يلي :

(أ) كل توقيع على هذه الاتفاقية وتاريخه .

(ب) كل ايداع لوثيقة تصديق أو قبول أو موافقة أو انضمام وتاريخه .

(ج) تاريخ دخول هذه الاتفاقية حيز النفاذ .

(د) تاريخ دخول أي تعديل لحدود المسؤولية المقررة بمقتضى هذه الاتفاقية حيز النفاذ .

(هـ) أي نقض بمقتضى المادة ٥٤ .

المادة ٥٤ - النقض

(١) لأي دولة طرف أن تنقض هذه الاتفاقية بارسال اخطار كتابي الى جهة الايداع .

(٢) يسري مفعول النقض بعد مائة وثمانين يوما من تاريخ تسلم جهة الايداع الاخطار .

المادة ٥٥ - العلاقة بالوثائق الأخرى لاتفاقية وارسو

(١) ترجح هذه الاتفاقية على أي قواعد تنطبق على النقل الجوي الدولي :

١- بين الدول الأطراف في هذه الاتفاقية بجكم أن تلك الدول تشترك في أنها طرف في :

(أ) *اتفاقية توحيد بعض قواعد النقل الجوى الدولي* الموقعة في وارسو في ١٢ أكتوبر/تشرين الأول ١٩٢٩ (المسماة فيما بعد باتفاقية وارسو) ،

(ب) *بروتوكول تعديل اتفاقية توحيد بعض قواعد النقل الجوي الدولي* الموقعة في وارسو في ١٢ أكتوبر/تشرين الأول ١٩٢٩ المحرر في لاهاي في ٢٨ سبتمبر/أيلول ١٩٥٥ (المسمى فيما بعد ببروتوكول لاهاي) ،

(ج) *اتفاقية توحيد بعض قواعد النقل الجوى الدولي الذي يقوم به شخص غير الناقل المتعاقد ، المكملة لاتفاقية وارسو* ، الموقعة في غوادالاخارا في ١٨ سبتمبر/أيلول ١٩٦١ (المسماة فيما بعد اتفاقية غوادالاخارا) ،

(د) *بروتوكول تعديل اتفاقية توحيد بعض قواعد النقل الجوى الدولي الموقعة في وارسو في ١٢ أكتوبر/تشرين الأول ١٩٢٩ المعدلة بموجب البروتوكول المحرر في لاهاي في* ٢٨ سبتمبر/أيلول ١٩٥٥ الموقع في مدينة غواتيمالا في ٨ مارس/آذار ١٩٧١(المسمى فيما بعد بروتوكول مدينة غواتيمالا) ،

(هـ) البروتوكولات الاضافية من رقم ١ الى رقم ٣ وبروتوكول مونتريال رقم ٤ لتعديل اتفاقية وارسو المعدلة بموجب بروتوكول لاهاي أو اتفاقية وارسو المعدلة بموجب كل من بروتوكول لاهاي وبروتوكول مدينة غواتيمالا الموقعة في مونتريال في ٢٥ سبتمبر/أيلول ١٩٧٥ (المسماة فيما بعد باسم بروتوكولات مونتريال) ،

(٢) أو داخل اقليم أي دولة واحدة طرف في هذه الاتفاقية بحكم أن تلك الدولة طرف في واحدة أو أكثر من الوثائق المشار اليها في الفقرات الفرعية من (أ) الى (هـ) أعلاه .

المادة ٥٦ - الدول التي لديها أكثر من نظام قانوني واحد

(١) اذا كانت لدى احدى الدول وحدتان اقليميتان أو أكثر تطبق فيها نظم قانونية مختلفة فيما يتعلق بالمسائل التي تتناولها هذه الاتفاقية . فيجوز لها عند التوقيع أو التصديق أو القبول أو الموافقة أو الانضمام أن تعلن أن هذه الاتفاقية يشمل سريانها جميع وحداتها الاقليمية أو يشمل واحدة او أكثر من هذه الوحدات فقط ويجوز لها تعديل هذا الاعلان عن طريق تقديم اعلان آخر في أي وقت .

(٢) يجب ابلاغ أي اعلان من هذا القبيل لجهة الايداع ويجب أن ينص صراحة على الوحدات الاقليمية التي تسري عليها الاتفاقية .

(٣) فيما يتعلق بأي دولة طرف أصدرت مثل هذا الاعلان :

(أ) تفسر الاشارات الى " العملة الوطنية " في المادة ٢٣ على أنها اشارات الى عملة الوحدة الاقليمية المعنية من تلك الدولة .

(ب) وتفسر الاشارة الى القانون الوطني " في المادة ٢٨ على أنها اشارة الى قانون الوحدة الاقليمية المعنية من تلك الدولة .

المادة ٥٧ التحفظات

لا يجوز ابداء أي تحفظ على هذه الاتفاقية . الا أنه يجوز لأي دولة طرف أن تعلن في أي وقت بموجب خطاب موجه الى جهة الايداع أن هذه الاتفاقية لا تسري على

(أ) النقل الجوي الدولي الذي تقوم به مباشرة تلك الدولة الطرف لأغراض غـــير تجاريـــة فيمـــا يتعلـــق بوظائفها ومهامها كدولة ذات سيادة ،

(ب) و/أو نقل الأشخاص والبضائع والأمتعة لسلطاتها العسكرية على متن طائرات مسجلة في تلك الدولة أو مستأجرة بواسطتها ، والتي حجزت حمولتها الكلية بواسطة تلك السلطات أو بالنيابة عنها .

اثباتا لذلك ، قام المفوضون الموقعون أدناه ، المخولون حسب الأصول ، بتوقيع هذه الاتفاقية .

حررت في مونتريال في اليوم الثامن والعشرين من شهر مايو / أيار من عام ألف وتسعمائة وتسعة وتسعين باللغـــات العربية والانجليزية والصينية والفرنسية والروسية والاسبانية ، وتكون كل النصوص بهذه اللغات متساوية في الحجيـة . وتظل هذه الاتفاقية مودعة في محفوظات منظمة الطيران المدني الدولي ، وتسلم جهة الايداع صورا معتمدة رسميا منـها الى كل الدول الأطراف في هذه الاتفاقية ، والى كل الدول الأطراف في اتفاقية وارسو ، وبروتوكول لاهـــاي ، واتفاقيـــة غوادالاخارا ، وبروتوكول مدينة غواتيمالا ، وبروتوكولات مونتريال .

统一国际航空运输某些规则的公约

本公约的当事国：

认识到一九二九年十月十二日在华沙签订的《统一国际航空运输某些规则的公约》（以下称“华沙公约”），和其他有关文件在统一国际航空私法方面作出的重要贡献；

认识到使华沙公约和相关文件现代化和一体化的必要性；

认识到确保国际航空运输消费者的利益的重要性，以及在恢复性赔偿原则的基础上提供公平赔偿的必要性；

重申按照一九四四年十二月七日订于芝加哥的《国际民用航空公约》的原则和宗旨对国际航空运输运营的有序发展以及旅客、行李和货物通畅流动的愿望；

确信国家间采取集体行动，通过制定一项新公约来增进对国际航空运输某些规则的一致化和法典化是获得公平的利益平衡的最适当方法；

达成协议如下：

第一章

总　则

第一条　适用范围

一、本公约适用于所有以航空器运送人员、行李或者货物而收取报酬的国际运输。本公约同样适用于航空运输企业以航空器履行的免费运输。

二、就本公约而言，“国际运输”系指根据当事人的约定，不论在运输中有无间断或者转运，其出发地点和目的地点是在两个当事国的领土内，或者在一个当事国的领土内，而在另一国的领土内有一个约定的经停地点的任何运输，即使该国为非当事国。就本公约而言，在一个当事国的领土内两个地点之间的运输，而在另一国的领土内没有约定的经停地点的，不是国际运输。

三、运输合同各方认为几个连续的承运人履行的运输是一项单一的业务活动的，无论其形式是以一个合同订立或者一系列合同订立，就本公约而言，应当视为一项不可分割的运输，并不仅因其中一个合同或者一系列合同完全在同一国领土内履行而丧失其国际性质。

四、本公约同样适用于第五章规定的运输，除非该章另有规定。

第二条　国家履行的运输和邮件运输

一、本公约适用于国家或者依法成立的公共机构在符合第一条规定的条件下履行的运输。

二、在邮件运输中，承运人仅根据适用于承运人和邮政当局之间关系的规则，对有关的邮政当局承担责任。

三、除本条第二款规定外，本公约的规定不适用于邮件运输。

第二章

旅客、行李和货物运输的有关凭证和当事人的义务

第三条　旅客和行李

一、就旅客运输而言，应当出具个人的或者集体的运输凭证，该项凭证应当载明：

（一）　对出发地点和目的地点的标示；

（二）　出发地点和目的地点是在一个当事国的领土内，而在另一国的领土内有一个或者几个约定的经停地点的，至少对其中一个此种经停地点的标示。

二、任何保存第一款内容的其他方法都可以用来代替出具该款中所指的运输凭证。采用此种其他方法的，承运人应当提出向旅客出具一份以此种方法保存的内容的书面陈述。

三、承运人应当就每一件托运行李向旅客出具行李识别标签。

四、旅客应当得到书面提示，说明在适用本公约的情况下，本公约调整并可能限制承运人对死亡或者伤害，行李毁灭、遗失或者损坏，以及延误所承担的责任。

五、未遵守前几款的规定，不影响运输合同的存在或者有效，该运输合同仍应当受本公约规则的约束，包括有关责任限制规则的约束。

第四条　货物

一、就货物运输而言，应当出具航空货运单。

二、任何保存将要履行的运输的记录的其他方法都可以用来代替出具航空货运单。采用此种其他方法的，承运人应当应托运人的要求，向托运人出具货物收据，以便识别货物并能获得此种其他方法所保存记录中的内容。

第五条　航空货运单或者货物收据的内容

航空货运单或者货物收据应当包括：

（一）对出发地点和目的地点的标示；

（二）出发地点和目的地点是在一个当事国的领土内，而在另一国的领土内有一个或者几个约定的经停地点的，至少对其中一个此种经停地点的标示；以及

（三）对货物重量的标示。

第六条　关于货物性质的凭证

为履行海关、警察和类似公共当局的手续，必要时托运人可以被要求出具标明货物性质的凭证。此项规定对承运人不造成任何职责、义务或由此产生的责任。

第七条　航空货运单的说明

一、托运人应当填写航空货运单正本一式三份。

二、第一份应当注明“交承运人”，由托运人签字。第二份应当注明“交收货人”，由托运人和承运人签字。第三份由承运人签字，承运人在接受货物后应当将其交给托运人。

三、承运人和托运人的签字可以印就或者用戳记。

四、承运人根据托运人的请求填写航空货运单的，在没有相反证明的情况下，应当视为代托运人填写。

第八条　多包件货物的凭证

在货物不止一个包件时：

（一）货物承运人有权要求托运人分别填写航空货运单；

（二）采用第四条第二款所指其他方法的，托运人有权要求承运人分别出具货物收据。

第九条　未遵守凭证的规定

未遵守第四条至第八条的规定，不影响运输合同的存在或者有效，该运输合同仍应当受本公约规则的约束，包括有关责任限制规则的约束。

第十条　对凭证说明的责任

一、对托运人或者以其名义在航空货运单上载入的关于货物的各项说明和陈述的正确性，或者对托运人或者以其名义提供给承运人载入货物收据或者载入第四条第二款所指其他方法所保存记录的关于货物的各项说明和陈述的正确性，托运人应当负责。以托运人名义行事的人同时也是承运人的代理人的，同样适用上述规定。

二、对因托运人或者以其名义所提供的各项说明和陈述不符合规定、不正确或者不完全，给承运人或者承运人对之负责的任何其他人造成的一切损失，托运人应当对承运人承担赔偿责任。

三、除本条第一款和第二款规定的外，对因承运人或者以其名义在货物收据或者在第四条第二款所指其他方法所保存的记录上载入的各项说明和陈述不符合规定、不正确或者不完全，给托运人或者托运人对之负责的任何其他人造成的一切损失，承运人应当对托运人承担赔偿责任。

第十一条　凭证的证据价值

一、航空货运单或者货物收据是订立合同、接受货物和所列运输条件的初步证据。

二、航空货运单上或者货物收据上关于货物的重量、尺寸和包装以及包件件数的任何陈述是所述事实的初步证据；除经过承运人在托运人在场时查对并在航空货运单上或者货物收据上注明经过如此查对或者其为关于货物外表状况的陈述外，航空货运单上或者货物收据上关于货物的数量、体积和状况的陈述不能构成不利于承运人的证据。

第十二条　处置货物的权利

一、托运人在负责履行运输合同规定的全部义务的条件下，有权对货物进行处置，即可以在出发地机场或者目的地机场将货物提回，或者在途中经停时中止运输，或者要求在目的地点或者途中将货物交给非原指定的收货人，或者要求将货物运回出发地机场。托运人不得因行使此种处置权而使承运人或者其他托运人遭受损失，并必须偿付因行使此种权利而产生的费用。

二、托运人的指示不可能执行的，承运人必须立即通知托运人。

三、承运人按照托运人的指示处置货物，没有要求出示托运人所收执的那份航空货运单或者货

物收据，给该份航空货运单或者货物收据的合法持有人造成损失的，承运人应当承担责任，但是不妨碍承运人对托运人的追偿权。

四、收货人的权利依照第十三条规定开始时，托运人的权利即告终止。但是，收货人拒绝接受货物，或者无法同收货人联系的，托运人恢复其处置权。

第十三条　货物的交付

一、除托运人已经根据第十二条行使其权利外，收货人于货物到达目的地点，并在缴付应付款项和履行运输条件后，有权要求承运人向其交付货物。

二、除另有约定外，承运人应当负责在货物到达后立即通知收货人。

三、承运人承认货物已经遗失，或者货物在应当到达之日起七日后仍未到达的，收货人有权向承运人行使运输合同所赋予的权利。

第十四条　托运人和收货人权利的行使

托运人和收货人在履行运输合同规定的义务的条件下，无论为本人或者他人的利益，可以分别以本人的名义行使第十二条和第十三条赋予的所有权利。

第十五条　托运人和收货人的关系或者第三人之间的相互关系

一、第十二条、第十三条和第十四条不影响托运人同收货人之间的相互关系，也不影响从托运人或者收货人获得权利的第三人之间的相互关系。

二、第十二条、第十三条和第十四条的规定，只能通过航空货运单或者货物收据上的明文规定予以变更。

第十六条　海关、警察或者其他公共当局的手续

一、托运人必须提供必需的资料和文件，以便在货物可交付收货人前完成海关、警察或者任何其他公共当局的手续。因没有此种资料、文件，或者此种资料、文件不充足或者不符合规定而引起的损失，除由于承运人、其受雇人或者代理人的过错造成的外，托运人应当对承运人承担责任。

二、承运人没有对此种资料或者文件的正确性或者充足性进行查验的义务。

第三章

承运人的责任和损害赔偿范围

第十七条　旅客死亡和伤害 - 行李损失

一、对于因旅客死亡或者身体伤害而产生的损失，只要造成死亡或者伤害的事故是在航空器上或者在上、下航空器的任何操作过程中发生的，承运人就应当承担责任。

二、对于因托运行李毁灭、遗失或者损坏而产生的损失，只要造成毁灭、遗失或者损坏的事件是在航空器上或者在托运行李处于承运人掌管之下的任何期间内发生的，承运人就应当承担责任。但是，行李损失是由于行李的固有缺陷、质量或者瑕疵造成的，在此范围内承运人不承担责任。关于非托运行李，包括个人物件，承运人对因其过错或者其受雇人或者代理人的过错造成的损失承担责任。

三、承运人承认托运行李已经遗失，或者托运行李在应当到达之日起二十一日后仍未到达的，旅客有权向承运人行使运输合同所赋予的权利。

四、除另有规定外，本公约中“行李”一词系指托运行李和非托运行李。

第十八条　货物损失

一、对于因货物毁灭、遗失或者损坏而产生的损失，只要造成损失的事件是在航空运输期间发生的，承运人就应当承担责任。

二、但是，承运人证明货物的毁灭、遗失或者损坏是由于下列一个或者几个原因造成的，在此范围内承运人不承担责任：

（一）货物的固有缺陷、质量或者瑕疵；

（二）承运人或者其受雇人、代理人以外的人包装货物的，货物包装不良；

（三）战争行为或者武装冲突；

（四）公共当局实施的与货物入境、出境或者过境有关的行为。

三、本条第一款所称的航空运输期间，系指货物处于承运人掌管之下的期间。

四、航空运输期间，不包括机场外履行的任何陆路、海上或者内水运输过程。但是，此种运输是在履行航空运输合同时为了装载、交付或者转运而办理的，在没有相反证明的情况下，所发生的任何损失推定为在航空运输期间发生的事件造成的损失。承运人未经托运人同意，以其他运输方式代替

当事人各方在合同中约定采用航空运输方式的全部或者部分运输的，此项以其他方式履行的运输视为在航空运输期间。

第十九条　延误

旅客、行李或者货物在航空运输中因延误引起的损失，承运人应当承担责任。但是，承运人证明本人及其受雇人和代理人为了避免损失的发生，已经采取一切可合理要求的措施或者不可能采取此种措施的，承运人不对因延误引起的损失承担责任。

第二十条　免责

经承运人证明，损失是由索赔人或者索赔人从其取得权利的人的过失或者其他不当作为、不作为造成或者促成的，应当根据造成或者促成此种损失的过失或者其他不当作为、不作为的程度，相应全部或者部分免除承运人对索赔人的责任。旅客以外的其他人就旅客死亡或者伤害提出赔偿请求的，经承运人证明，损失是旅客本人的过失或者其他不当作为、不作为造成或者促成的，同样应当根据造成或者促成此种损失的过失或者其他不当作为、不作为的程度，相应全部或者部分免除承运人的责任。本条适用于本公约中的所有责任条款，包括第二十一条第一款。

第二十一条　旅客死亡或者伤害的赔偿

一、对于根据第十七条第一款所产生的每名旅客不超过100,000特别提款权的损害赔偿，承运人不得免除或者限制其责任。

二、对于根据第十七条第一款所产生的损害赔偿每名旅客超过100,000特别提款权的部分，承运人证明有下列情形的，不应当承担责任：

（一）　损失不是由于承运人或者其受雇人、代理人的过失或者其他不当作为、不作为造成的；或者

（二）　损失完全是由第三人的过失或者其他不当作为、不作为造成的。

第二十二条　延误、行李和货物的责任限额

一、在人员运输中因第十九条所指延误造成损失的，承运人对每名旅客的责任以4,150特别提款权为限。

二、在行李运输中造成毁灭、遗失、损坏或者延误的，承运人的责任以每名旅客1,000特别提款权为限，除非旅客在向承运人交运托运行李时，特别声明在目的地点交付时的利益，并在必要时支付附加费。在此种情况下，除承运人证明旅客声明的金额高于在目的地点交付时旅客的实际利益外，承运人在声明金额范围内承担责任。

三、在货物运输中造成毁灭、遗失、损坏或者延误的，承运人的责任以每公斤17特别提款权为限，除非托运人在向承运人交运包件时，特别声明在目的地点交付时的利益，并在必要时支付附加费。在此种情况下，除承运人证明托运人声明的金额高于在目的地点交付时托运人的实际利益外，承运人在声明金额范围内承担责任。

四、货物的一部分或者货物中任何物件毁灭、遗失、损坏或者延误的，用以确定承运人赔偿责任限额的重量，仅为该包件或者该数包件的总重量。但是，因货物一部分或者货物中某一物件的毁灭、遗失、损坏或者延误，影响同一份航空货运单、货物收据或者在未出具此两种凭证时按第四条第二款所指其他方法保存的记录所列的其他包件的价值的，确定承运人的赔偿责任限额时，该包件或者数包件的总重量也应当考虑在内。

五、经证明，损失是由于承运人、其受雇人或者代理人的故意或者明知可能造成损失而轻率地作为或者不作为造成的，不适用本条第一款和第二款的规定；对于受雇人、代理人的此种作为或者不作为，还应当证明该受雇人、代理人是在受雇、代理范围内行事。

六、第二十一条和本条规定的限额不妨碍法院按照其法律另外加判全部或者一部分法院费用及原告所产生的其他诉讼费用，包括利息。判给的赔偿金额，不含法院费用及其他诉讼费用，不超过承运人在造成损失的事情发生后六个月内或者已过六个月而在起诉以前已书面向原告提出的金额的，不适用上述规定。

第二十三条　货币单位的换算

一、本公约中以特别提款权表示的各项金额，系指国际货币基金组织确定的特别提款权。在进行司法程序时，各项金额与各国家货币的换算，应当按照判决当日用特别提款权表示的该项货币的价值计算。当事国是国际货币基金组织成员的，用特别提款权表示的其国家货币的价值，应当按照判决当日有效的国际货币基金组织在其业务和交易中采用的计价方法进行计算。当事国不是国际货币基金组织成员的，用特别提款权表示的其国家货币的价值，应当按照该国所确定的办法计算。

二、但是，非国际货币基金组织成员并且其法律不允许适用本条第一款规定的国家，可以在批准、加入或者其后的任何时候声明，在其领土内进行司法程序时，就第二十一条而言，承运人对每名旅客的责任以1,500,000货币单位为限；就第二十二条第一款而言，承运人对每名旅客的责任以62,500货币单位为限；就第二十二条第二款而言，承运人对每名旅客的责任以15,000货币单位为限；就第二十二条第三款而言，承运人的责任以每公斤250货币单位为限。此种货币单位相当于含有千分之九百

纯度的六十五点五毫克的黄金。各项金额可换算为有关国家货币，取其整数。各项金额与国家货币的换算，应当按照该有关国家的法律进行。

三、本条第一款最后一句所称的计算，以及本条第二款所称的换算方法，应当使以当事国货币计算的第二十一条和第二十二条的数额的价值与根据本条第一款前三句计算的真实价值尽可能相同。当事国在交存对本公约的批准书、接受书、核准书或者加入书时，应当将根据本条第一款进行的计算方法或者根据本条第二款所得的换算结果通知保存人，该计算方法或者换算结果发生变化时亦同。

第二十四条　限额的复审

一、在不妨碍本公约第二十五条规定的条件下，并依据本条第二款的规定，保存人应当对第二十一条、第二十二条和第二十三条规定的责任限额每隔五年进行一次复审，第一次复审应当在本公约生效之日起第五年的年终进行，本公约在其开放签署之日起五年内未生效的，第一次复审应当在本公约生效的第一年内进行，复审时应当参考与上一次修订以来或者就第一次而言本公约生效之日以来累积的通货膨胀率相应的通货膨胀因素。用以确定通货膨胀因素的通货膨胀率，应当是构成第二十三条第一款所指特别提款权的货币的发行国消费品价格指数年涨跌比率的加权平均数。

二、前款所指的复审结果表明通货膨胀因素已经超过百分之十的，保存人应当将责任限额的修订通知当事国。该项修订应当在通知当事国六个月后生效。在将该项修订通知当事国后的三个月内，多数当事国登记其反对意见的，修订不得生效，保存人应当将此事提交当事国会议。保存人应当将修订的生效立即通知所有当事国。

三、尽管有本条第一款的规定，三分之一的当事国表示希望进行本条第二款所指的程序，并且第一款所指通货膨胀因素自上一次修订之日起，或者在未曾修订过的情形下自本公约生效之日起，已经超过百分之三十的，应当在任何时候进行该程序。其后的依照本条第一款规定程序的复审每隔五年进行一次，自依照本款进行的复审之日起第五年的年终开始。

第二十五条　关于限额的订定

承运人可以订定，运输合同适用高于本公约规定的责任限额，或者无责任限额。

第二十六条　合同条款的无效

任何旨在免除本公约规定的承运人责任或者降低本公约规定的责任限额的条款，均属无效，但是，此种条款的无效，不影响整个合同的效力，该合同仍受本公约规定的约束。

第二十七条　合同自由

本公约不妨碍承运人拒绝订立任何运输合同、放弃根据本公约能够获得的任何抗辩理由或者制定同本公约规定不相抵触的条件。

第二十八条　先行付款

因航空器事故造成旅客死亡或者伤害的，承运人应当在其国内法有如此要求的情况下，向有权索赔的自然人不迟延地先行付款，以应其迫切经济需要。此种先行付款不构成对责任的承认，并可从承运人随后作为损害赔偿金支付的任何数额中抵销。

第二十九条　索赔的根据

在旅客、行李和货物运输中，有关损害赔偿的诉讼，不论其根据如何，是根据本公约、根据合同、根据侵权，还是根据其他任何理由，只能依照本公约规定的条件和责任限额提起，但是不妨碍确定谁有权提起诉讼以及他们各自的权利。在任何此类诉讼中，均不得判给惩罚性、惩戒性或者任何其他非补偿性的损害赔偿。

第三十条　受雇人、代理人 - 索赔的总额

一、就本公约中所指损失向承运人的受雇人、代理人提起诉讼时，该受雇人、代理人证明其是在受雇、代理范围内行事的，有权援用本公约中承运人有权援用的条件和责任限额。

二、在此种情况下，承运人及其受雇人和代理人的赔偿总额不得超过上述责任限额。

三、经证明，损失是由于受雇人、代理人的故意或者明知可能造成损失而轻率地作为或者不作为造成的，不适用本条第一款和第二款的规定，但货物运输除外。

第三十一条　异议的及时提出

一、有权提取托运行李或者货物的人收受托运行李或者货物而未提出异议，为托运行李或者货物已经在良好状况下并在与运输凭证或者第三条第二款和第四条第二款所指其他方法保存的记录相符的情况下交付的初步证据。

二、发生损失的，有权提取托运行李或者货物的人必须在发现损失后立即向承运人提出异议，并且，托运行李发生损失的，至迟自收到托运行李之日起七日内提出，货物发生损失的，至迟自收到货物之日起十四日内提出。发生延误的，必须至迟自行李或者货物交付收件人处置之日起二十一日内

提出异议。

三、任何异议均必须在前款规定的期间内以书面形式提出或者发出。

四、除承运人一方有欺诈外，在前款规定的期间内未提出异议的，不得向承运人提起诉讼。

第三十二条　责任人的死亡

责任人死亡的，损害赔偿诉讼可以根据本公约的规定，对其遗产的合法管理人提起。

第三十三条　管辖权

一、损害赔偿诉讼必须在一个当事国的领土内，由原告选择，向承运人住所地、主要营业地或者订立合同的营业地的法院，或者向目的地点的法院提起。

二、对于因旅客死亡或者伤害而产生的损失，诉讼可以向本条第一款所述的法院之一提起，或者在这样一个当事国领土内提起，即在发生事故时旅客的主要且永久居所在该国领土内，并且承运人使用自己的航空器或者根据商务协议使用另一承运人的航空器经营到达该国领土或者从该国领土始发的旅客航空运输业务，并且在该国领土内该承运人通过其本人或者与其有商务协议的另一承运人租赁或者所有的处所从事其旅客航空运输经营。

三、就第二款而言，

（一）“商务协议”系指承运人之间就其提供联营旅客航空运输业务而订立的协议，但代理协议除外；

（二）“主要且永久居所”系指事故发生时旅客的那一个固定和永久的居住地。在此方面，旅客的国籍不得作为决定性的因素。

四、诉讼程序适用案件受理法院的法律。

第三十四条　仲裁

一、在符合本条规定的条件下，货物运输合同的当事人可以约定，有关本公约中的承运人责任所发生的任何争议应当通过仲裁解决。此协议应当以书面形式订立。

二、仲裁程序应当按照索赔人的选择，在第三十三条所指的其中一个管辖区内进行。

三、仲裁员或者仲裁庭应当适用本公约的规定。

四、本条第二款和第三款的规定应当视为每一仲裁条款或者仲裁协议的一部分，此种条款或者协议中与上述规定不一致的任何条款均属无效。

第三十五条　诉讼时效

一、自航空器到达目的地点之日、应当到达目的地点之日或者运输终止之日起两年期间内未提起诉讼的，丧失对损害赔偿的权利。

二、上述期间的计算方法，依照案件受理法院的法律确定。

第三十六条　连续运输

一、由几个连续承运人履行的并属于第一条第三款规定的运输，接受旅客、行李或者货物的每一个承运人应当受本公约规则的约束，并就在运输合同中其监管履行的运输区段的范围内，作为运输合同的订约一方。

二、对于此种性质的运输，除明文约定第一承运人对全程运输承担责任外，旅客或者任何行使其索赔权利的人，只能对发生事故或者延误时履行该运输的承运人提起诉讼。

三、关于行李或者货物，旅客或者托运人有权对第一承运人提起诉讼，有权接受交付的旅客或者收货人有权对最后承运人提起诉讼，旅客、托运人和收货人均可以对发生毁灭、遗失、损坏或者延误的运输区段的承运人提起诉讼。上述承运人应当对旅客、托运人或者收货人承担连带责任。

第三十七条　对第三人的追偿权

本公约不影响依照本公约规定对损失承担责任的人是否有权向他人追偿的问题。

第四章

联合运输

第三十八条　联合运输

一、部分采用航空运输，部分采用其他运输方式履行的联合运输，本公约的规定应当只适用于符合第一条规定的航空运输部分，但是第十八条第四款另有规定的除外。

二、在航空运输部分遵守本公约规定的条件下，本公约不妨碍联合运输的各方当事人在航空运

输凭证上列入有关其他运输方式的条件。

第五章

非缔约承运人履行的航空运输

第三十九条　缔约承运人 - 实际承运人

一方当事人（以下简称“缔约承运人”）本人与旅客、托运人或者与以旅客或者托运人名义行事的人订立本公约调整的运输合同，而另一当事人（以下简称“实际承运人”）根据缔约承运人的授权，履行全部或者部分运输，但就该部分运输而言该另一当事人又不是本公约所指的连续承运人的，适用本章的规定。在没有相反证明时，此种授权应当被推定为是存在的。

第四十条　缔约承运人和实际承运人各自的责任

除本章另有规定外，实际承运人履行全部或者部分运输，而根据第三十九条所指的合同，该运输是受本公约调整的，缔约承运人和实际承运人都应当受本公约规则的约束，缔约承运人对合同考虑到的全部运输负责，实际承运人只对其履行的运输负责。

第四十一条　相互责任

一、实际承运人的作为和不作为，实际承运人的受雇人、代理人在受雇、代理范围内的作为和不作为，关系到实际承运人履行的运输的，也应当视为缔约承运人的作为和不作为。

二、缔约承运人的作为和不作为，缔约承运人的受雇人、代理人在受雇、代理范围内的作为和不作为，关系到实际承运人履行的运输的，也应当视为实际承运人的作为和不作为。但是，实际承运人承担的责任不因此种作为或者不作为而超过第二十一条、第二十二条、第二十三条和第二十四条所指的数额。任何有关缔约承运人承担本公约未规定的义务或者放弃本公约赋予的权利或者抗辩理由的特别协议，或者任何有关第二十二条考虑到的在目的地点交付时利益的特别声明，除经过实际承运人同意外，均不得影响实际承运人。

第四十二条　异议和指示的对象

依照本公约规定向承运人提出的异议或者发出的指示，无论是向缔约承运人还是向实际承运人提出或者发出，具有同等效力。但是，第十二条所指的指示，只在向缔约承运人发出时，方为有效。

第四十三条　受雇人和代理人

实际承运人的受雇人、代理人或者缔约承运人的受雇人、代理人，证明其是在受雇、代理范围内行事的，就实际承运人履行的运输而言，有权援用本公约规定的适用于雇用该人的或者被代理的承运人的条件和责任限额，但是经证明依照本公约其行为不能援用该责任限额的除外。

第四十四条　赔偿总额

对于实际承运人履行的运输，实际承运人和缔约承运人以及他们的在受雇、代理范围内行事的受雇人和代理人的赔偿总额不得超过依照本公约得以从缔约承运人或者实际承运人获得赔偿的最高数额，但是上述任何人都不承担超过对其适用的责任限额。

第四十五条　索赔对象

对实际承运人履行的运输提起的损害赔偿诉讼，可以由原告选择，对实际承运人提起或者对缔约承运人提起，也可以同时或者分别对实际承运人和缔约承运人提起。损害赔偿诉讼只对其中一个承运人提起的，该承运人有权要求另一承运人参加诉讼，诉讼程序及其效力适用案件受理法院的法律。

第四十六条　附加管辖权

第四十五条考虑到的损害赔偿诉讼，必须在一个当事国的领土内，由原告选择，按照第三十三条规定向可以对缔约承运人提起诉讼的法院提起，或者向实际承运人住所地或者其主要营业地有管辖权的法院提起。

第四十七条　合同条款的无效

任何旨在免除本章规定的缔约承运人或者实际承运人责任或者降低适用于本章的责任限额的合同条款，均属无效，但是，此种条款的无效，不影响整个合同的效力，该合同仍受本章规定的约束。

第四十八条　缔约承运人和实际承运人的相互关系

除第四十五条规定外，本章的规定不影响承运人之间的权利和义务，包括任何追偿权或者求偿权。

第六章

其它规定

第四十九条　强制适用

运输合同的任何条款和在损失发生以前达成的所有特别协议，其当事人借以违反本公约规则的，无论是选择所适用的法律还是变更有关管辖权的规则，均属无效。

第五十条　保险

当事国应当要求其承运人就其在本公约中的责任进行充分保险。当事国可以要求经营航空运输至该国内的承运人提供其已就本公约中的责任进行充分保险的证据。

第五十一条　特殊情况下履行的运输

第三条至第五条、第七条和第八条关于运输凭证的规定，不适用于承运人正常业务范围以外的在特殊情况下履行的运输。

第五十二条　日的定义

本公约所称“日”，系指日历日，而非工作日。

第七章

最后条款

第五十三条　签署、批准和生效

一、本公约于一九九九年五月二十八日在蒙特利尔开放，听由一九九九年五月十日至二十八日在蒙特利尔召开的国际航空法大会的参加国签署。一九九九年五月二十八日以后，本公约应当在蒙特利尔国际民用航空组织总部对所有国家开放签署，直至其根据本条第六款生效。

二、本公约同样向地区性经济一体化组织开放签署。就本公约而言，“地区性经济一体化组织”系指由某一地区的主权国家组成的对于本公约调整的某些事项有权能的并经正式授权可以签署及批

准、接受、核准或者加入本公约的任何组织。本公约中对“当事国”的提述，同样适用于地区性经济一体化组织，但是第一条第二款、第三条第一款第（二）项、第五条第（二）项、第二十三条、第三十三条、第四十六条和第五十七条第（二）项中的除外。就第二十四条而言，其对“多数当事国”和“三分之一的当事国”的提述不应适用于地区性经济一体化组织。

三、本公约应当经签署本公约的国家和地区性经济一体化组织批准。

四、未签署本公约的国家或者地区性经济一体化组织，可以在任何时候接受、核准或者加入本公约。

五、批准书、接受书、核准书或者加入书应当交存国际民用航空组织，在此指定其为保存人。

六、本公约应当于第三十份批准书、接受书、核准书或者加入书交存保存人后的第六十天在交存这些文件的国家之间生效。就本款而言，地区性经济一体化组织交存的文件不得计算在内。

七、对于其他国家或者其他地区性经济一体化组织，本公约应当于其批准书、接受书、核准书或者加入书交存日后六十天对其生效。

八、保存人应当将下列事项迅速通知各签署方和当事国：

（一）对本公约的每一签署及其日期；

（二）每一批准书、接受书、核准书或者加入书的交存及其日期；

（三）本公约的生效日期；

（四）对本公约所设定责任限额的任何修订的生效日期；

（五）第五十四条所指的退出。

第五十四条　退出

一、任何当事国可以向保存人提交书面通知，以退出本公约。

二、退出应当自保存人收到通知之日后的第一百八十天起生效。

第五十五条　与其他华沙公约文件的关系

在下列情况下，本公约应当优先于国际航空运输所适用的任何规则：

一、该项国际航空运输在本公约当事国之间履行，而这些当事国同为下列条约的当事国：

（一） 一九二九年十月十二日在华沙签订的《统一国际航空运输某些规则的公约》（以下简称华沙公约）；

（二） 一九五五年九月二十八日订于海牙的《修订一九二九年十月十二日在华沙签订的统一国际航空运输某些规则的公约的议定书》（以下简称海牙议定书）；

（三） 一九六一年九月十八日在瓜达拉哈拉签订的《统一非缔约承运人所办国际航空运输某些规则以补充华沙公约的公约》（以下简称瓜达拉哈拉公约）；

（四） 一九七一年三月八日在危地马拉城签订的《修订经一九五五年九月二十八日订于海牙的议定书修正的一九二九年十月十二日在华沙签订的统一国际航空运输某些规则的公约的议定书》（以下简称危地马拉城议定书）；

（五） 一九七五年九月二十五日在蒙特利尔签订的修订经海牙议定书或者经海牙议定书和危地马拉城议定书修正的华沙公约的第一号至第三号附加议定书以及蒙特利尔第四号议定书（以下简称各个蒙特利尔议定书）；或者

二、该项国际航空运输在本公约的一个当事国领土内履行，而该当事国是上述第（一）项至第（五）项所指一个或者几个文件的当事国。

第五十六条 有多种法律制度的国家

一、一国有两个或者多个领土单位，在各领土单位内对于本公约处理的事项适用不同的法律制度的，该国可以在签署、批准、接受、核准或者加入时，声明本公约适用于该国所有领土单位或者只适用于其中一个或者多个领土单位，该国也可随时提交另一份声明以修改此项声明。

二、作出此项声明，均应当通知保存人，声明中应当明确指明适用本公约的领土单位。

三、就已作出此项声明的当事国而言，

（一）第二十三条所述的“国家货币”应当解释为该国有关领土单位的货币；并且

（二）第二十八条所述的“国内法”应当解释为该国有关领土单位的法律。

第五十七条 保留

对本公约不得保留，但是当事国可以在任何时候向保存人提交通知，声明本公约不适用于：

（一）由当事国就其作为主权国家的职能和责任为非商业目的而直接办理和运营的国际航空运输；以及/或者

（二）使用在该当事国登记的或者为该当事国所租赁的、其全部运力已为其军事当局或者以该当局的名义所保留的航空器，为该当局办理的人员、货物和行李运输。

下列全权代表经正式授权，已在本公约上签字，以昭信守。

本公约于一九九九年五月二十八日订于蒙特利尔，以中文、英文、阿拉伯文、法文、俄文和西班牙文写成，各种文本同等作准。本公约应当存放于国际民用航空组织档案处，由保存人将核正无误的公约副本分送本公约的所有当事国以及华沙公约、海牙议定书、瓜达拉哈拉公约、危地马拉城议定书和各个蒙特利尔议定书的所有当事国。

DCW Doc No. 58
28/5/99

FINAL ACT

of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization
at Montreal from 10 to 28 May 1999

ACTE FINAL

de la Conférence internationale de droit aérien
tenue sous les auspices de
l'Organisation de l'aviation civile internationale
à Montréal du 10 au 28 mai 1999

ACTA FINAL

de la Conferencia internacional de derecho aeronáutico,
celebrada bajo el patrocinio de la
Organización de Aviación Civil Internacional
en Montreal del 10 al 28 de mayo de 1999

ЗАКЛЮЧИТЕЛЬНЫЙ АКТ

Международной конференции по воздушному праву,
проводившейся под эгидой
Международной организации гражданской авиации
в Монреале с 10 по 28 мая 1999 года

الوثيقة الختامية

للمؤتمر الدولي للقانون الجوي
الذي عقد برعاية
منظمة الطيران المدني الدولي
في مونتريال من ١٠ الى ٢٨ مايو / أيار ١٩٩٩

最后文件

在国际民用航空组织主持下
于 1999 年 5 月 10 日至 28 日在蒙特利尔举行的
航空法国际会议

MONTREAL
28 MAY 1999

MONTRÉAL
28 MAI 1999

MONTREAL
28 DE MAYO DE 1999

МОНРЕАЛЬ
28 МАЯ 1999 ГОДА

مونتريال
٢٨ مايو / أيار ١٩٩٩

蒙特利尔
1999 年 5 月 28 日

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FINAL ACT

of the International Conference on Air Law held under the auspices of the International Civil Aviation Organization at Montreal from 10 to 28 May 1999

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 10 to 28 May 1999 for the purpose of considering the draft Articles of the *Convention for the Unification of Certain Rules for International Carriage by Air,* prepared by the Legal Committee of the International Civil Aviation Organization and the *Special Group on the Modernization and Consolidation of the "Warsaw System"* established by the Council of the International Civil Aviation Organization.

The Governments of the following 118 States were represented at the Conference:

Afghanistan, the Islamic State of
Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Azerbaijani Republic, the
Bahamas, the Commonwealth of the
Bahrain, the State of
Bangladesh, the People's Republic of
Belarus, the Republic of
Belgium, the Kingdom of
Belize
Benin, the Republic of
Bolivia, the Republic of
Botswana, the Republic of
Brazil, the Federative Republic of
Burkina Faso
Cambodia, the Kingdom of
Cameroon, the Republic of
Canada
Cape Verde, the Republic of
Central African Republic, the
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Cyprus, the Republic of
Czech Republic, the
Denmark, the Kingdom of
Dominican Republic, the
Egypt, the Arab Republic of
Ethiopia, Federal Democratic Republic of
Finland, the Republic of
French Republic, the
Gabonese Republic, the
Gambia, the Republic of the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Haiti, the Republic of
Hellenic Republic, the
Holy See, the
Iceland, the Republic of
India, the Republic of
Indonesia, the Republic of
Ireland
Israel, the State of
Italian Republic, the
Jamaica
Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Lesotho, the Kingdom of
Liberia, the Republic of
Lithuania, the Republic of
Luxembourg, the Grand Duchy of
Madagascar, the Republic of
Malawi, the Republic of

Malta, the Republic of
Marshall Islands, the Republic of the
Mauritius, the Republic of
Mexican States, the United
Monaco, the Principality of
Mongolia
Morocco, the Kingdom of
Mozambique, the Republic of
Namibia, the Republic of
Netherlands, the Kingdom of the
New Zealand
Niger, the Republic of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Oman, the Sultanate of
Pakistan, the Islamic Republic of
Panama, the Republic of
Paraguay, the Republic of
Peru, the Republic of
Philippines, the Republic of the
Poland, the Republic of
Portuguese Republic, the
Qatar, the State of
Republic of Korea, the
Romania
Russian Federation, the
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Singapore, the Republic of
Slovak Republic, the
Slovenia, the Republic of
South Africa, the Republic of
Spain, the Kingdom of
Sri Lanka, the Democratic Socialist Republic of
Sudan, the Republic of the
Swaziland, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Syrian Arab Republic, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of
Uganda, the Republic of
Ukraine
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United States of America, the
Uruguay, the Eastern Republic of
Uzbekistan, the Republic of
Venezuela, the Republic of
Viet Nam, the Socialist Republic of
Yemen, the Republic of
Zambia, the Republic of
Zimbabwe, the Republic of

The following 11 international organizations were represented by Observers:

African Civil Aviation Commission (AFCAC)
Arab Civil Aviation Commission (ACAC)
European Civil Aviation Conference (ECAC)
European Community (EC)
International Air Transport Association (IATA)
International Chamber of Commerce (ICC)
International Law Association (ILA)
International Union of Aviation Insurers (IUAI)
Interstate Aviation Committee (IAC)
Latin American Association of Air and Space Law (ALADA)
Latin American Civil Aviation Commission (LACAC)

The Conference unanimously elected as President Dr. Kenneth Rattray (Jamaica) and further unanimously elected as Vice-Presidents:

First Vice-President – Mr. K.J.H. Kjellin (Sweden)
Second Vice-President – Mr. A.K. Mensah, Wg. Cdr. (Rtd.) (Ghana)
Third Vice-President – Mr. R.H. Wang (China)
Fourth Vice-President – Mr. H. Mahfoud (Syrian Arab Republic)

The Secretary General of the Conference was Mr. Renato Cláudio Costa Pereira, Secretary General of the International Civil Aviation Organization. Dr. Ludwig Weber, Director of the Legal Bureau of the International Civil Aviation Organization was the Executive Secretary of the Conference. He was assisted by Mr. Silvério Espínola, Principal Legal Officer, who was the Deputy Secretary, and by Messrs. John Augustin, Legal Officer, and Arie Jakob, Associate Expert, who were Assistant Secretaries of the Conference and by other officials of the Organization.

The Conference established a Commission of the Whole and the following Committees:

Credentials Committee

Chairman:	Mr. S. Ahmad	(Pakistan)
Members:	Mr. J.K. Abonouan	(Côte d'Ivoire)
	Mr. Y. Mäkelä	(Finland)
	Mr. A.F.O. Al-Momani	(Jordan)
	Mr. E. Espinoza	(Panama)

Drafting Committee

Chairman:	Mr. A. Jones	(United Kingdom)
Members:	Mr. E. Martínez Gondra	(Argentina)
	Mr. M.A. Gamboa	(Argentina)
	Mr. H.L. Sánchez	(Argentina)
	Mr. M.J. Moatshe	(Botswana)
	Mr. K. Mosupukwa	(Botswana)
	Mr. J. Escobar	(Brazil)
	Mr. G. Pereira	(Brazil)
	Mr. G.H. Lauzon	(Canada)
	Mrs. E.A. MacNab	(Canada)
	Ms. S.H.D. Cheung	(China)
	Mr. K.Y. Kwok	(China)
	Ms. F. Liu	(China)
	Ms. X. Zhang	(China)
	Mr. J.K. Abonouan	(Côte d'Ivoire)
	Mr. B. Gnakare	(Côte d'Ivoire)
	Mr. A. Arango	(Cuba)
	Dr. K. El Hussainy	(Egypt)
	Mr. J. Courtial	(France)
	Mr. A. Veillard	(France)
	Mr. D. Videau	(France)
	Mr. E.A. Frietsch	(Germany)
	Mr. S. Göhre	(Germany)
	Mr. D. von Elm	(Germany)
	Mr. R.K. Maheshwari	(India)
	Mr. A. Aoki	(Japan)
	Ms. J. Iwama	(Japan)
	Mr. Y. Koga	(Japan)
	Mr. T. Shimura	(Japan)
	Ms. D.A. Achapa	(Kenya)

	Mr. J.J. Titoo	(Kenya)
	Mr. S. Eid	(Lebanon)
	Mr. V. Poonoosamy	(Mauritius)
	Mrs. M. Reyes de Vásquez	(Panama)
	Mr. A. Bavykin	(Russian Federation)
	Mr. N. Ostroumov	(Russian Federation)
	Mr. S.A.F. Al-Ghamdi	(Saudi Arabia)
	Mr. L. Adrover	(Spain)
	Ms. M.-L. Huidobro	(Spain)
	Mr. K.J.H. Kjellin	(Sweden)
	Mr. P. Smith	(United Kingdom)
	Mr. D. Horn	(United States)
	Mr. P.B. Schwarzkopf	(United States)
	Mr. D.S. Newman	(United States)

Friends of the Chairman's Group

Chairman:	Dr. Kenneth Rattray	(Jamaica)
Members:	Ms. C. Boughton	(Australia)
	Mr. J. Aleck	(Australia)
	Mr. P. Yang	(Cameroon)
	Mr. T. Tekou	(Cameroon)
	Mr. G.H. Lauzon	(Canada)
	Mrs. E.A. MacNab	(Canada)
	Mr. A.R. Lisboa	(Chile)
	Mrs. A. Valdés	(Chile)
	Mr. R.H. Wang	(China)
	Ms. S.H.D. Cheung	(China)
	Ms. F. Liu	(China)
	Ms. X. Zhang	(China)
	Dr. K. El Hussainy	(Egypt)
	Mr. J. Bernière	(France)
	Mr. M.-Y. Peissik	(France)
	Mr. J. Courtial	(France)
	Mr. D. Videau	(France)
	Mr. A.K. Mensah, Wg. Cdr. (Rtd.)	(Ghana)
	Mr. P.V. Jayakrishnan	(India)
	Mr. V.S. Madan	(India)
	Mr. H.S. Khola	(India)
	Mr. A. Aoki	(Japan)
	Mr. Y. Kawarabayashi	(Japan)
	Mr. T. Shimura	(Japan)
	Mr. S. Eid	(Lebanon)
	Mr. V. Poonoosamy	(Mauritius)
	Mr. R.V. Rukoro	(Namibia)
	Ms. H.L. Talbot	(New Zealand)
	Mr. A.G. Mercer	(New Zealand)
	Mr. S.N. Ahmad	(Pakistan)
	Mr. N. Sharwani	(Pakistan)
	Mr. A. Bavykin	(Russian Federation)

Mr. V. Bordunov	(Russian Federation)
Mr. N. Ostroumov	(Russian Federation)
Mr. S.A.F. Al-Ghamdi	(Saudi Arabia)
Mr. S. Tiwari	(Singapore)
Ms. S.H. Tan	(Singapore)
Mr. J. Kok	(Singapore)
Mr. A. Čičerov	(Slovenia)
Mr. S.D. Liyanage	(Sri Lanka)
Mr. K.J.H. Kjellin	(Sweden)
Mr. N.A. Gradin	(Sweden)
Mr. L.-G. Malmberg	(Sweden)
Mr. M. Ryff	(Switzerland)
Mr. H. Mahfoud	(Syrian Arab Republic)
Mr. N. Chataoui	(Tunisia)
Mr. S. Kilani	(Tunisia)
Mr. A. Jones	(United Kingdom)
Mr. P. Smith	(United Kingdom)
Mr. D. Horn	(United States)
Mr. D.S. Newman	(United States)
Mr. P.B. Schwarzkopf	(United States)
Mr. B.L. Labarge	(United States)
Mr. C.B. Borucki	(Uruguay)
Mr. E.D. Gaggero	(Uruguay)
Mr. L.G. Giorello-Sancho	(Uruguay)
Mr. A. Sanes de Léon	(Uruguay)
Mr. V.T. Dinh	(Viet Nam)
Mr. X.T. Lai	(Viet Nam)

Following its deliberations, the Conference adopted the text of the *Convention for the Unification of Certain Rules for International Carriage by Air.*

The said Convention has been opened for signature at Montreal this day.

The Conference furthermore adopted by consensus the following Resolutions:

RESOLUTION NO. 1

MINDFUL of the importance of the consolidation and modernization of certain rules relating to international carriage by air, thereby restoring the necessary degree of uniformity and clarity of such rules;

ACKNOWLEDGING that the necessary consolidation and modernization of these rules can only be adequately achieved through collective State action in accordance with the principles and rules of international law;

AFFIRMING that the achievements and benefits embodied in the *Convention for the Unification of Certain Rules for International Carriage by Air* should be implemented for the benefit of all parties concerned as soon as possible;

THE CONFERENCE:

1. *URGES* States to ratify the *Convention for the Unification of Certain Rules for International Carriage by Air,* adopted on 28 May 1999 at Montreal, as soon as possible and to deposit an instrument of ratification with the International Civil Aviation Organization (ICAO) in accordance with Article 53 of said Convention;

2. *DIRECTS* the Secretary General of ICAO to bring this resolution immediately to the attention of States with the objective mentioned above.

RESOLUTION NO. 2

RECOGNIZING the tragic consequences that flow from aircraft accidents;

MINDFUL OF the plight of families of victims, or survivors of such accidents;

TAKING INTO ACCOUNT the immediate economic needs of many such families or survivors,

THE CONFERENCE:

1. *URGES* carriers to make advance payments without delay based on the immediate economic needs of families of victims, or survivors of accidents;

2. *ENCOURAGES* States Parties to the *Convention for the Unification of Certain Rules for International Carriage by Air,* adopted on 28 May 1999 at Montreal, to take appropriate measures under national law to promote such action by carriers.

RESOLUTION NO. 3

RECOGNIZING the prime importance of safety for the orderly development of international civil aviation; and

RECOGNIZING the importance of the protection of passengers, crew, air transport workers and the general public; and

WHEREAS the transportation or carriage of dangerous goods by air is regulated internationally by Annex 18 to the *Convention on International Civil Aviation*; and

WHEREAS the provisions of said Annex require a shipper that offers any package of dangerous goods for transport by air to ensure that the goods are not forbidden for transport by air and are properly classified, packed, marked, labelled and accompanied by a properly executed dangerous goods transport document as specified in the said Annex;

THE CONFERENCE RESOLVES:

THAT each State take all appropriate measures to ensure continued strict compliance by carriers, shippers and freight forwarders with the Standards of Annex 18 to the *Convention on International Civil Aviation*; and

THAT carriers, shippers and freight forwarders comply with all applicable safety measures, including those taken in application of Annex 18 to the *Convention on International Civil Aviation.*

IN WITNESS WHEREOF the Delegates have signed this Final Act.

DONE at Montreal on the twenty-eighth day of May of the year One Thousand Nine Hundred and Ninety-Nine in six authentic texts in the English, Arabic, Chinese, French, Russian and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

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ACTE FINAL

de la Conférence internationale de droit aérien tenue sous les auspices de l'Organisation de l'aviation civile internationale à Montréal du 10 au 28 mai 1999

Les plénipotentiaires à la Conférence internationale de droit aérien tenue sous les auspices de l'Organisation de l'aviation civile internationale se sont réunis à Montréal du 10 au 28 mai 1999 afin d'examiner les projets d'articles de la *Convention pour l'unification de certaines règles relatives au transport aérien international,* établis par le Comité juridique de l'Organisation de l'aviation civile internationale et par le *Groupe spécial sur la modernisation et la refonte du «régime de Varsovie»* institué par le Conseil de l'Organisation de l'aviation civile internationale.

Les gouvernements des 118 États ci-après étaient représentés à la conférence:

Afghanistan (État islamique d')
Afrique du Sud (République sud-africaine)
Algérie (République algérienne démocratique et populaire)
Allemagne (République fédérale d')
Arabie saoudite (Royaume d')
Argentine (République argentine)
Australie
Autriche (République d')
Azerbaïdjan (République azerbaïdjanaise)
Bahamas (Commonwealth des)
Bahreïn (État de)
Bangladesh (République populaire du)
Bélarus (République du)
Belgique (Royaume de)
Belize
Bénin (République du)
Bolivie (République de)
Botswana (République du)
Brésil (République fédérative du)
Burkina Faso
Cambodge (Royaume du)
Cameroun (République du)
Canada
Cap-Vert (République du)
Chili (République du)
Chine (République populaire de)
Chypre (République de)
Colombie (République de)
Costa Rica (République du)
Côte d'Ivoire (République de)
Cuba (République de)
Danemark (Royaume du)
Égypte (République arabe d')
Émirats arabes unis
Espagne (Royaume d')
États-Unis d'Amérique
Éthiopie (République fédérale démocratique d')
Fédération de Russie
Finlande (République de)
France (République française)
Gabon (République gabonaise)
Gambie (République de)
Ghana (République du)
Grèce (République hellénique)
Guinée (République de)
Haïti (République d')
Îles Marshall (République des)
Inde (République de l')
Indonésie (République d')
Irlande
Islande (République d')
Israël (État d')
Italie (République italienne)
Jamaïque
Japon
Jordanie (Royaume hachémite de)
Kenya (République du)
Koweït (État du)
Lesotho (Royaume du)

Liban (République libanaise)
Libéria (République du)
Lituanie (République de)
Luxembourg (Grand-Duché de)
Madagascar (République de)
Malawi (République du)
Malte (République de)
Maroc (Royaume du)
Maurice (République de)
Mexique (États-Unis du)
Monaco (Principauté de)
Mongolie
Mozambique (République du)
Namibie (République de)
Niger (République du)
Nigéria (République fédérale du)
Norvège (Royaume de)
Nouvelle-Zélande
Oman (Sultanat d')
Ouganda (République de l')
Ouzbékistan (République d')
Pakistan (République islamique du)
Panama (République du)
Paraguay (République du)
Pays-Bas (Royaume des)
Pérou (République du)
Philippines (République des)
Pologne (République de)
Portugal (République portugaise)
Qatar (État du)
République arabe syrienne
République centrafricaine
République de Corée
République dominicaine
République tchèque
Roumanie
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
Saint-Siège
Sénégal (République du)
Singapour (République de)
Slovaquie (République slovaque)
Slovénie (République de)
Soudan (République du)
Sri Lanka (République socialiste démocratique de)
Suède (Royaume de)
Suisse (Confédération suisse)
Swaziland (Royaume du)
Thaïlande (Royaume de)
Togo (République togolaise)
Trinité-et-Tobago (République de)
Tunisie (République tunisienne)
Turquie (République turque)
Ukraine
Uruguay (République orientale de l')
Venezuela (République du)
Viet Nam (République socialiste du)
Yémen (République du)
Zambie (République de)
Zimbabwe (République du)

Les 11 organisations internationales ci-après étaient représentées par des observateurs:

Association de droit international (ILA)
Association du transport aérien international (IATA)
Association latino-américaine de droit aérien et spatial (ALADA)
Chambre de commerce internationale (CCI)
Comité aéronautique inter-États (CAI)
Commission africaine de l'aviation civile (CAFAC)
Commission arabe de l'aviation civile (CAAC)
Commission latino-américaine de l'aviation civile (CLAC)
Communauté européenne (CE)
Conférence européenne de l'aviation civile (CEAC)
Union internationale des assureurs aéronautiques (UIAA)

La conférence a élu à l'unanimité président M. Kenneth Rattray (Jamaïque) et a aussi élu à l'unanimité les vice-présidents suivants:

Premier Vice-Président – M. K.J.H. Kjellin (Suède)
Deuxième Vice-Président – M. A.K. Mensah (Ghana)
Troisième Vice-Président – M. R.H. Wang (Chine)
Quatrième Vice-Président – M. H. Mahfoud (République arabe syrienne)

Le Secrétaire général de la conférence était M. Renato Cláudio Costa Pereira, Secrétaire général de l'Organisation de l'aviation civile internationale. M. Ludwig Weber, Directeur des affaires juridiques de l'Organisation de l'aviation civile internationale était Secrétaire exécutif de la conférence. Il était assisté de M. Silvério Espínola, Conseiller juridique principal, qui a rempli les fonctions de Sous-Secrétaire, et de MM. John Augustin, Conseiller juridique, et Arie Jakob, Expert associé, qui ont rempli les fonctions de Secrétaires adjoints de la conférence, et d'autres fonctionnaires de ladite Organisation.

La conférence a institué une Commission plénière ainsi que les comités suivants:

Comité de vérification des pouvoirs

Président:	M. S. Ahmad	(Pakistan)
Membres:	M. J.K. Abonouan	(Côte d'Ivoire)
	M. Y. Mäkelä	(Finlande)
	M. A.F.O. Al-Momani	(Jordanie)
	M. E. Espinoza	(Panama)

Comité de rédaction

Président:	M. A. Jones	(Royaume-Uni)
Membres:	M. E.A. Frietsch	(Allemagne)
	M. S. Göhre	(Allemagne)
	M. D. von Elm	(Allemagne)
	M. S.A.F. Al-Ghamdi	(Arabie saoudite)
	M. E. Martínez Gondra	(Argentine)
	M. M.A. Gamboa	(Argentine)
	M. H.L. Sánchez	(Argentine)
	M. M.J. Moatshe	(Botswana)
	M. K. Mosupukwa	(Botswana)
	M. J. Escobar	(Brésil)
	M. G. Pereira	(Brésil)
	M. G.H. Lauzon	(Canada)
	Mme E.A. MacNab	(Canada)
	Mme S.H.D. Cheung	(Chine)
	M. K.Y. Kwok	(Chine)
	Mme F. Liu	(Chine)
	Mme X. Zhang	(Chine)
	M. J.K. Abonouan	(Côte d'Ivoire)
	M. B. Gnakare	(Côte d'Ivoire)
	M. A. Arango	(Cuba)
	M. K. El Hussainy	(Égypte)
	M. L. Adrover	(Espagne)
	Mme M.-L. Huidobro	(Espagne)
	M. D. Horn	(États-Unis)
	M. P.B. Schwarzkopf	(États-Unis)
	M. D.S. Newman	(États-Unis)
	M. A. Bavykin	(Fédération de Russie)
	M. N. Ostroumov	(Fédération de Russie)
	M. J. Courtial	(France)

	M. A. Veillard	(France)
	M. D. Videau	(France)
	M. R.K. Maheshwari	(Inde)
	M. A. Aoki	(Japon)
	Mme J. Iwama	(Japon)
	M. Y. Koga	(Japon)
	M. T. Shimura	(Japon)
	Mme D.A. Achapa	(Kenya)
	M. J.J. Titoo	(Kenya)
	M. S. Eid	(Liban)
	M. V. Poonoosamy	(Maurice)
	Mme M. Reyes de Vásquez	(Panama)
	M. P. Smith	(Royaume-Uni)
	M. K.J.H. Kjellin	(Suède)

Groupe «Les amis du Président»

Président:	M. Kenneth Rattray	(Jamaïque)
Membres:	M. S.A.F. Al-Ghamdi	(Arabie saoudite)
	Mme C. Boughton	(Australie)
	M. J. Aleck	(Australie)
	M. P. Yang	(Cameroun)
	M. T. Tekou	(Cameroun)
	M. G.H. Lauzon	(Canada)
	Mme E.A. MacNab	(Canada)
	M. A.R. Lisboa	(Chili)
	Mme A. Valdés	(Chili)
	M. R.H. Wang	(Chine)
	Mme S.H.D. Cheung	(Chine)
	Mme F. Liu	(Chine)
	Mme X. Zhang	(Chine)
	M. K. El Hussainy	(Égypte)
	M. D. Horn	(États-Unis)
	M. D.S. Newman	(États-Unis)
	M. P.B. Schwarzkopf	(États-Unis)
	M. B.L. Labarge	(États-Unis)
	M. A. Bavykin	(Fédération de Russie)
	M. V. Bordunov	(Fédération de Russie)
	M. N. Ostroumov	(Fédération de Russie)
	M. J. Bernière	(France)
	M. M.-Y. Peissik	(France)
	M. J. Courtial	(France)
	M. D. Videau	(France)
	M. A.K. Mensah	(Ghana)
	M. P.V. Jayakrishnan	(Inde)
	M. V.S. Madan	(Inde)
	M. H.S. Khola	(Inde)
	M. A. Aoki	(Japon)
	M. Y. Kawarabayashi	(Japon)
	M. T. Shimura	(Japon)

M. S. Eid	(Liban)
M. V. Poonoosamy	(Maurice)
M. R.V. Rukoro	(Namibie)
Mme H.L. Talbot	(Nouvelle-Zélande)
M. A.G. Mercer	(Nouvelle-Zélande)
M. S.N. Ahmad	(Pakistan)
M. N. Sharwani	(Pakistan)
M. A. Jones	(Royaume-Uni)
M. P. Smith	(Royaume-Uni)
M. S. Tiwari	(Singapour)
Mme S.H. Tan	(Singapour)
M. J. Kok	(Singapour)
M. A. Čičerov	(Slovénie)
M. S.D. Liyanage	(Sri Lanka)
M. K.J.H. Kjellin	(Suède)
M. N.A. Gradin	(Suède)
M. L.-G. Malmberg	(Suède)
M. M. Ryff	(Suisse)
M. H. Mahfoud	(République arabe syrienne)
M. N. Chataoui	(Tunisie)
M. S. Kilani	(Tunisie)
M. C.B. Borucki	(Uruguay)
M. E.D. Gaggero	(Uruguay)
M. L.G. Giorello-Sancho	(Uruguay)
M. A. Sanes de León	(Uruguay)
M. V.T. Dinh	(Viet Nam)
M. X.T. Lai	(Viet Nam)

Suite à ses délibérations, la conférence a adopté le texte de la *Convention pour l'unification de certaines règles relatives au transport aérien international.*

Ladite convention a été ouverte à la signature ce jour, à Montréal.

La conférence a de plus adopté par consensus les résolutions ci-après:

RÉSOLUTION N° 1

LA CONFÉRENCE,

AYANT À L'ESPRIT l'importance de la refonte et de la modernisation de certaines règles relatives au transport aérien international pour le rétablissement du degré nécessaire d'uniformité et de clarté desdites règles,

RECONNAISSANT que la refonte et la modernisation nécessaires desdites règles ne peuvent être réalisées que grâce à l'action collective d'États conformément aux principes et aux règles du droit international,

AFFIRMANT que les progrès et avantages contenus dans la *Convention pour l'unification de certaines règles relatives au transport aérien international* devraient être mis en œuvre le plus tôt possible dans l'intérêt de toutes les parties intéressées,

1. *PRIE INSTAMMENT* les États de ratifier dès que possible la *Convention pour l'unification de certaines règles relatives au transport aérien international* adoptée le 28 mai 1999 à Montréal et de déposer un instrument de ratification auprès de l'Organisation de l'aviation civile internationale (OACI) conformément à l'article 53 de ladite convention;

2. *CHARGE* le Secrétaire général de l'OACI de porter immédiatement cette résolution à l'attention des États, afin que soit atteint l'objectif mentionné ci-dessus.

RÉSOLUTION N° 2

LA CONFÉRENCE,

CONSCIENTE des conséquences tragiques des accidents d'aviation,

AYANT À L'ESPRIT la situation difficile dans laquelle se trouvent les victimes ou les survivants de tels accidents,

TENANT COMPTE en particulier des besoins économiques immédiats d'un grand nombre des familles ou survivants en question,

1. *PRIE INSTAMMENT* les transporteurs de verser dans les meilleurs délais des avances fondées sur les besoins économiques immédiats des familles des victimes ou des survivants d'accidents;

2. *ENCOURAGE* les États parties à la *Convention pour l'unification de certaines règles relatives au transport aérien international*, adoptée le 28 mai 1999 à Montréal, à prendre les mesures appropriées prévues par leur législation nationale pour encourager les transporteurs à prendre de telles mesures.

RÉSOLUTION N° 3

LA CONFÉRENCE,

RECONNAISSANT l'importance primordiale de la sécurité pour le développement ordonné de l'aviation civile internationale,

RECONNAISSANT l'importance de la protection des passagers, des équipages, des travailleurs du transport aérien et du public en général,

CONSIDÉRANT que le transport de marchandises dangereuses par voie aérienne est réglementé internationalement par l'Annexe 18 de la *Convention relative à l'aviation civile internationale*,

CONSIDÉRANT que les dispositions de ladite Annexe exigent qu'un expéditeur offrant des colis de marchandises dangereuses pour leur transport aérien doit s'assurer que les marchandises ne sont pas interdites pour le transport par voie aérienne et qu'elles sont convenablement classées, emballées, marquées, étiquetées et accompagnées d'un document de transport de marchandises dangereuses en règle, comme il est spécifié dans ladite Annexe,

DÉCIDE:

QUE chaque État prendra toutes les mesures nécessaires pour assurer l'observation rigoureuse par les transporteurs, expéditeurs et transitaires des normes de l'Annexe 18 à la *Convention relative à l'aviation civile internationale*, et

QUE les transporteurs, expéditeurs et transitaires doivent observer toutes les mesures de sécurité applicables, notamment celles prises en application de l'Annexe 18 à la *Convention relative à l'aviation civile internationale*.

EN FOI DE QUOI les délégués ont signé le présent Acte final.

FAIT à Montréal le vingt-huit mai mil neuf cent quatre-vingt-dix-neuf en un seul exemplaire comprenant six textes authentiques rédigés dans les langues française, anglaise, arabe, chinoise, espagnole et russe, qui sera déposé auprès de l'Organisation de l'aviation civile internationale, laquelle en transmettra copie certifiée conforme à chacun des gouvernements représentés à la conférence.

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ACTA FINAL

de la Conferencia internacional de derecho aeronáutico celebrada en Montreal bajo el patrocinio de la Organización de Aviación Civil Internacional del 10 al 28 de mayo de 1999

Los Plenipotenciarios en la Conferencia internacional de derecho aeronáutico, celebrada bajo el patrocinio de la Organización de Aviación Civil Internacional, se reunieron en Montreal del 10 al 28 de mayo de 1999 para examinar los proyectos de artículos del *Convenio para la unificación de ciertas reglas para el transporte aéreo internacional*, preparados por el Comité Jurídico de la Organización de Aviación Civil Internacional y el *Grupo especial sobre la modernización y refundición del "Sistema de Varsovia"* constituido por el Consejo de la Organización de Aviación Civil Internacional.

Estuvieron representados en la Conferencia los Gobiernos de los 118 Estados siguientes:

Afganistán, Estado Islámico del
Alemania, República Federal de
Arabia Saudita, Reino de
Australia
Austria, República de
Bahamas, Commonwealth de las
Bahrein, Estado de
Bangladesh, República Popular de
Belarús, República de
Bélgica, Reino de
Belice
Benin, República de
Bolivia, República de
Botswana, República de
Brasil, República Federativa del
Burkina Faso
Cabo Verde, República de
Camboya, Reino de
Camerún, República del
Canadá
Chile, República de
China, República Popular de
Chipre, República de
Colombia, República de
Confederación Suiza
Costa Rica, República de
Côte d'Ivoire, República de
Cuba, República de
Dinamarca, Reino de
Egipto, República Árabe de
Emiratos Árabes Unidos
Eslovenia, República de
España, Reino de
Estados Unidos de América
Estados Unidos Mexicanos
Etiopía, República Democrática Federal de
Federación de Rusia
Filipinas, República de
Finlandia, República de
Gambia, República de
Ghana, República de
Guinea, República de
Haití, República de
India, República de la
Indonesia, República de
Irlanda
Islandia, República de
Islas Marshall, República de las
Israel, Estado de
Jamaica
Japón
Jordania, Reino Hachemita de
Kenya, República de
Kuwait, Estado de
Lesotho, Reino de
Liberia, República de
Lituania, República de
Luxemburgo, Gran Ducado de
Madagascar, República de
Malawi, República de

Malta, República de
Marruecos, Reino de
Mauricio, República de
Mónaco, Principado de
Mongolia
Mozambique, República de
Namibia, República de
Níger, República del
Nigeria, República Federal de
Noruega, Reino de
Nueva Zelandia
Omán, Sultanía de
Países Bajos, Reino de los
Pakistán, República Islámica del
Panamá, República de
Paraguay, República del
Perú, República del
Polonia, República de
Qatar, Estado de
Reino Unido de Gran Bretaña e Irlanda del Norte
República Árabe Siria
República Argelina Democrática y Popular
República Argentina
República Azerbaiyana
República Centroafricana
República Checa
República de Corea
República Dominicana
República Eslovaca
República Francesa
República Gabonesa
República Helénica
República Italiana
República Libanesa
República Portuguesa
República Togolesa
Rumania
Santa Sede
Senegal, República del
Singapur, República de
Sri Lanka, República Socialista Democrática de
Sudáfrica, República de
Sudán, República del
Suecia, Reino de
Swazilandia, Reino de
Tailandia, Reino de
Trinidad y Tabago, República de
Túnez, República de
Turquía, República de
Ucrania
Uganda, República de
Uruguay, República Oriental del
Uzbekistán, República de
Venezuela, República de
Viet Nam, República Socialista de
Yemen, República del
Zambia, República de
Zimbabwe, República de

También estuvieron representadas por observadores las 11 organizaciones internacionales siguientes:

Asociación de derecho internacional (ILA)
Asociación del Transporte Aéreo Internacional (IATA)
Asociación Latino Americana de Derecho Aeronáutico y Espacial (ALADA)
Cámara de Comercio Internacional (CCI)
Comisión Africana de Aviación Civil (CAFAC)
Comisión Árabe de Aviación Civil (CAAC)
Comisión Latinoamericana de Aviación Civil (CLAC)
Comité Interestatal de Aviación (IAC)
Comunidad Europea (CE)
Conferencia Europea de Aviación Civil (CEAC)
Unión Internacional de Aseguradores Aeronáuticos (UIAA)

La Conferencia eligió por unanimidad como Presidente al Dr. Kenneth Rattray (Jamaica) y como vicepresidentes, asimismo por unanimidad, a:

Primer vicepresidente – Sr. K.J.H. Kjellin (Suecia)
Segundo vicepresidente – Sr. A.K. Mensah, Tte. Cnel. Av. (R) (Ghana)
Tercer vicepresidente – Sr. R.H. Wang Ronghua (China)
Cuarto vicepresidente – Sr. H. Mahfoud (República Árabe Siria)

El Secretario General de la Conferencia fue el Sr. Renato Cláudio Costa Pereira, Secretario General de la Organización de Aviación Civil Internacional. El Dr. Ludwing Weber, Director de asuntos jurídicos de la Organización de Aviación Civil Internacional, fue el secretario ejecutivo de la Conferencia. En dicha labor fue asistido por el Sr. Silvério Espínola, Subdirector de asuntos jurídicos, que fue secretario adjunto, y por los Sres. John Augustin, abogado, y Arie Jakob, experto asociado, que fueron secretarios auxiliares de la Conferencia, y por otros funcionarios de la Organización.

La Conferencia creó una Comisión Plenaria y los siguientes Comités:

Comité de credenciales

Presidente:	Sr. S. Ahmad	(Pakistán)
Miembros:	Sr. J.K. Abonouan	(Côte d'Ivoire)
	Sr. Y. Mäkelä	(Finlandia)
	Sr. A.F.O. Al-Momani	(Jordania)
	Sr. E. Espinoza	(Panamá)

Comité de redacción

Presidente:	Sr. A. Jones	(Reino Unido)
Miembros:	Sr. E.A. Frietsch	(Alemania)
	Sr. S. Göhre	(Alemania)
	Sr. D. von Elm	(Alemania)
	Sr. S.A.F. Al-Ghamdi	(Arabia Saudita)
	Sr. E. Martínez Gondra	(Argentina)
	Sr. M.A. Gamboa	(Argentina)
	Sr. H.L. Sánchez	(Argentina)
	Sr. M.J. Moatshe	(Botswana)
	Sr. K. Mosupukwa	(Botswana)
	Sr. J. Escobar	(Brasil)
	Sr. G. Pereira	(Brasil)
	Sr. G.H. Lauzon	(Canadá)
	Sra. E.A. MacNab	(Canadá)
	Sra. S.H.D. Cheung	(China)
	Sr. K.Y. Kwok	(China)
	Sra. F. Liu	(China)
	Sra. X. Zhang	(China)
	Sr. J.K. Abonouan	(Côte d'Ivoire)
	Sr. B. Gnakare	(Côte d'Ivoire)
	Sr. A. Arango	(Cuba)
	Dr. K. El Hussainy	(Egipto)

Sr. L. Adrover	(España)
Sra. M.-L. Huidobro	(España)
Sr. D. Horn	(Estados Unidos)
Sr. P.B. Schwarzkopf	(Estados Unidos)
Sr. D.S. Newman	(Estados Unidos)
Sr. A. Bavykin	(Federación de Rusia)
Sr. N. Ostroumov	(Federación de Rusia)
Sr. J. Courtial	(Francia)
Sr. A. Veillard	(Francia)
Sr. D. Videau	(Francia)
Sr. R.K. Maheshwari	(India)
Sr. A. Aoki	(Japón)
Sra. J. Iwama	(Japón)
Sr. Y. Koga	(Japón)
Sr. T. Shimura	(Japón)
Sra. D.A. Achapa	(Kenya)
Sr. J.J. Titoo	(Kenya)
Sr. S. Eid	(Líbano)
Sr. V. Poonoosamy	(Mauricio)
Sra. M. Reyes de Vásquez	(Panamá)
Sr. P. Smith	(Reino Unido)
Sr. K.J.H. Kjellin	(Suecia)

Grupo de amigos del Presidente

Presidente:	Dr. Kenneth Rattray	(Jamaica)
Miembros:	Sr. S.A.F. Al-Ghamdi	(Arabia Saudita)
	Sra. C. Boughton	(Australia)
	Sr. J. Aleck	(Australia)
	Sr. P. Yang	(Camerún)
	Sr. T. Tekou	(Camerún)
	Sr. G.H. Lauzon	(Canadá)
	Sra. E.A. McNabb	(Canadá)
	Sr. A.R. Lisboa	(Chile)
	Sra. A. Valdés	(Chile)
	Sr. R.H. Wang	(China)
	Sra. S.H.D. Cheung	(China)
	Sra. F. Liu	(China)
	Sra. X. Zhang	(China)
	Dr. K. El Hussainy	(Egipto)
	Sr. A. Čičerov	(Eslovenia)
	Sr. D. Horn	(Estados Unidos)
	Sr. D.S. Newman	(Estados Unidos)
	Sr. P.B. Schwarzkopf	(Estados Unidos)
	Sr. B.L. Labarge	(Estados Unidos)
	Sr. A. Bavykin	(Federación de Rusia)
	Sr. V. Bordunov	(Federación de Rusia)
	Sr. N. Ostroumov	(Federación de Rusia)
	Sr. J. Bernière	(Francia)

Sr. M.-Y. Peissik	(Francia)
Sr. J. Courtial	(Francia)
Sr. D. Videau	(Francia)
Sr. A.K. Mensah, Tte. Cnel. Av. (R)	(Ghana)
Sr. P.V. Jayakrishnan	(India)
Sr. V.S. Madan	(India)
Sr. H.S. Khola	(India)
Sr. A. Aoki	(Japón)
Sr. Y. Kawarabayashi	(Japón)
Sr. T. Shimura	(Japón)
Sr. S. Eid	(Líbano)
Sr. V. Poonoosamy	(Mauricio)
Sr. R.V. Rukoro	(Namibia)
Sra. H.L. Talbot	(Nueva Zelandia)
Sr. A.G. Mercer	(Nueva Zelandia)
Sr. S.N. Ahmad	(Pakistán)
Sr. N. Sharwani	(Pakistán)
Sr. A. Jones	(Reino Unido)
Sr. P. Smith	(Reino Unido)
Sr. S. Tiwari	(Singapur)
Sra. S.H. Tan	(Singapur)
Sr. J. Kok	(Singapur)
Sr. H. Mahfoud	(República Árabe Siria)
Sr. S.D. Liyanage	(Sri Lanka)
Sr. K.J.H. Kjellin	(Suecia)
Sr. N.A. Gradin	(Suecia)
Sr. L.-G. Malmberg	(Suecia)
Sr. M. Ryff	(Suiza)
Sr. N. Chataoui	(Túnez)
Sr. S. Kilani	(Túnez)
Sr. C.B. Borucki	(Uruguay)
Sr. E.D. Gaggero	(Uruguay)
Sr. L.G. Giorello-Sancho	(Uruguay)
Sr. A. Sanes de León	(Uruguay)
Sr. V.T. Dinh	(Viet Nam)
Sr. X.T. Lai	(Viet Nam)

Como resultado de sus deliberaciones, la Conferencia adoptó el texto del *Convenio para la unificación de ciertas reglas para el transporte aéreo internacional.*

Dicho Convenio ha quedado abierto a la firma en Montreal en el día de hoy.

La Conferencia adoptó por consenso las resoluciones siguientes:

RESOLUCIÓN NÚM. 1

CONSCIENTE de la importancia de refundir y modernizar ciertas reglas relativas al transporte aéreo internacional, restableciendo de ese modo el grado necesario de uniformidad y claridad de dichas reglas;

RECONOCIENDO que la necesaria refundición y modernización de esas reglas sólo puede lograrse correctamente mediante medidas colectivas de los Estados, de conformidad con los principios y normas del derecho internacional;

AFIRMANDO que los resultados y beneficios que contiene el *Convenio para la unificación de ciertas reglas para el transporte aéreo internacional* deberían aplicarse lo antes posible para bien de todas las partes interesadas;

LA CONFERENCIA:

1. *INSTA* a los Estados a ratificar lo antes posible el *Convenio para la unificación de ciertas reglas para el transporte aéreo internacional*, adoptado el 28 de mayo de 1999 en Montreal, y a depositar un instrumento de ratificación ante la Organización de Aviación Civil Internacional (OACI), de conformidad con el Artículo 53 de dicho Convenio;

2. *ENCARGA* al Secretario General de la OACI que señale inmediatamente esta resolución a la atención de los Estados con el propósito mencionado antes.

RESOLUCIÓN NÚM. 2

RECONOCIENDO las consecuencias trágicas que se derivan de los accidentes de aeronaves;

CONSCIENTE DE la situación apremiante de las familias de las víctimas, o de los sobrevivientes de tales accidentes;

TENIENDO EN CUENTA las necesidades económicas inmediatas de muchas de esas familias o sobrevivientes,

LA CONFERENCIA:

1. *INSTA* a los transportistas a hacer pagos adelantados sin demora en función de las necesidades económicas inmediatas de las familias de las víctimas, o de los sobrevivientes de accidentes;

2. *ALIENTA* a los Estados Partes en el *Convenio para la unificación de ciertas reglas para el transporte aéreo internacional*, adoptado el 28 de mayo de 1999 en Montreal, a tomar las disposiciones apropiadas en el marco de sus legislaciones para promover esa medida de los transportistas.

RESOLUCIÓN NÚM. 3

RECONOCIENDO la importancia primordial de la seguridad operacional para el desarrollo ordenado de la aviación civil internacional; y

RECONOCIENDO la importancia de la protección de los pasajeros, los tripulantes, los trabajadores del transporte aéreo y el público en general; y

CONSIDERANDO que el transporte de mercancías peligrosas por vía aérea está reglamentado internacionalmente por el Anexo 18 al *Convenio sobre Aviación Civil Internacional*; y

CONSIDERANDO que las disposiciones de dicho Anexo requieren que un expedidor que ofrezca cualquier bulto de mercancías peligrosas para su transporte aéreo asegure que las mercancías no están prohibidas para su transporte por vía aérea y están debidamente clasificadas, embaladas, marcadas, etiquetadas y acompañadas por un documento de transporte de mercancías peligrosas debidamente ejecutado conforme a lo especificado en dicho Anexo;

LA CONFERENCIA RESUELVE:

QUE cada Estado adopte todas las medidas apropiadas para asegurar que los transportistas, expedidores y agrupadores de carga den estricto cumplimiento constantemente a las Normas del Anexo 18 al *Convenio sobre Aviación Civil Internacional*; y

QUE los transportistas, expedidores y agrupadores de carga se ajusten a todas las medidas aplicables sobre seguridad operacional, incluso las adoptadas en aplicación del Anexo 18 al *Convenio sobre Aviación Civil Internacional*.

EN TESTIMONIO DE LO CUAL los delegados firman la presente Acta Final.

HECHO en Montreal el día veintiocho de mayo del año mil novecientos noventa y nueve, en seis textos auténticos en los idiomas español, árabe, chino, francés, inglés y ruso, en un solo original que se depositará en la Organización de Aviación Civil Internacional, la cual enviará copia certificada del mismo a cada uno de los Gobiernos representados en la Conferencia.

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ЗАКЛЮЧИТЕЛЬНЫЙ АКТ

Международной конференции по воздушному праву, проводившейся под эгидой Международной организации гражданской авиации в Монреале с 10 по 28 мая 1999 года

Полномочные представители на Международной конференции по воздушному праву, проводившейся под эгидой Международной организации гражданской авиации, заседали в Монреале с 10 по 28 мая 1999 года в целях рассмотрения проекта статей *Конвенции для унификации некоторых правил международных воздушных перевозок*, подготовленных Юридическим комитетом Международной организации гражданской авиации и *Специальной группой по модернизации и консолидации "Варшавской системы"*, учрежденной Советом Международной организации гражданской авиации.

На Конференции были представлены правительства следующих 118 государств:

Австралия
Австрия (Австрийская Республика)
Азербайджанская Республика
Алжир (Алжирская Народная Демократическая Республика)
Аргентинская Республика
Афганистан (Исламское Государство)
Багамские Острова (Содружество Багамских Островов)
Бангладеш (Народная Республика)
Бахрейн (Государство)
Беларусь (Республика)
Белиз
Бельгия (Королевство)
Бенин (Республика)
Боливия (Республика)
Ботсвана (Республика)
Бразилия (Федеративная Республика)
Буркина-Фасо
Венесуэла (Республика)
Вьетнам (Социалистическая Республика)
Габонская Республика
Гаити (Республика)
Гамбия (Республика)
Гана (Республика)
Гвинея (Гвинейская Республика)
Германия (Федеративная Республика)
Греческая Республика
Дания (Королевство)
Доминиканская Республика
Египет (Арабская Республика)
Замбия (Республика)
Зимбабве (Республика)
Израиль (Государство)
Индия (Республика)
Индонезия (Республика)
Иордания (Иорданское Хашимитское Королевство)
Ирландия
Исландия (Республика)
Испания (Королевство)
Итальянская Республика
Йемен (Йеменская Республика)
Кабо-Верде (Республика)
Камбоджа (Королевство)
Камерун (Республика)
Канада
Катар (Государство)
Кения (Республика)
Кипр (Республика)
Китай (Китайская Народная Республика)
Колумбия (Республика)
Коста-Рика (Республика)
Кот-д'Ивуар (Республика)
Куба (Республика)
Кувейт (Государство)
Лесото (Королевство)
Либерия (Республика)
Ливанская Республика
Литва (Литовская Республика)
Люксембург (Великое Герцогство)
Маврикий (Республика)
Мадагаскар (Республика)
Малави (Республика)
Мальта (Республика)
Марокко (Королевство)

Маршалловы Острова (Республика)
Мексика (Мексиканские Соединенные Штаты)
Мозамбик (Республика)
Монако (Княжество)
Монголия
Намибия (Республика)
Нигер (Республика)
Нигерия (Федеративная Республика)
Нидерланды (Королевство Нидерландов)
Новая Зеландия
Норвегия (Королевство)
Объединенные Арабские Эмираты
Оман (Султанат)
Пакистан (Исламская Республика)
Панама (Республика)
Парагвай (Республика)
Перу (Республика)
Польша (Республика)
Португальская Республика
Республика Корея
Российская Федерация
Румыния
Саудовская Аравия (Королевство)
Свазиленд (Королевство)
Святейший Престол
Сенегал (Республика)
Сингапур (Республика)
Сирийская Арабская Республика
Словацкая Республика
Словения (Республика)
Соединенное Королевство Великобритании и Северной Ирландии
Соединенные Штаты Америки
Судан (Республика)
Таиланд (Королевство)
Тоголезская Республика
Тринидад и Тобаго (Республика)
Тунис (Тунисская Республика)
Турция (Турецкая Республика)
Уганда (Республика)
Узбекистан (Республика)
Украина
Уругвай (Восточная Республика)
Филиппины (Республика)
Финляндия (Финляндская Республика)
Франция (Французская Республика)
Центральноафриканская Республика
Чешская Республика
Чили (Республика)
Швейцарская Конфедерация
Швеция (Королевство)
Шри-Ланка (Демократическая Социалистическая Республика)
Эфиопия (Федеративная Демократическая Республика)
Южная Африка (Южно-Африканская Республика)
Ямайка
Япония

Наблюдателями были представлены следующие 11 международных организаций:

Арабская комиссия гражданской авиации (АРКГА)
Ассоциация международного права (АМП)
Африканская комиссия гражданской авиации (АКГА)
Европейская конференция гражданской авиации (ЕКГА)
Европейское сообщество (ЕС)
Латиноамериканская ассоциация воздушного и космического права (АЛАДА)
Латиноамериканская комиссия гражданской авиации (ЛАКГА)
Межгосударственный авиационный комитет (МАК)
Международная ассоциация воздушного транспорта (ИАТА)
Международная торговая палата (МТП)
Международный союз авиационного страхования (МСАС)

Конференция единогласно избрала Председателем д-ра Кеннета Раттрея (Ямайка) и также единогласно избрала следующих заместителей Председателя:

Первый заместитель Председателя – г-н К.Т.Х. Кьеллин (Швеция)
Второй заместитель Председателя – г-н А.К. Менсах, ком. ав. крыла (отст.) (Гана)
Третий заместитель Председателя – г-н Р.Х. Ван (Китай)
Четвертый заместитель Председателя – г-н Х. Махфуд (Сирийская Арабская Республика)

Обязанности генерального секретаря Конференции исполнял г-н Ренато Клаудио Коста Перейра, Генеральный секретарь Международной организации гражданской авиации. Д-р Людвиг Вебер, директор Юридического управления Международной организации гражданской авиации, был исполнительным секретарем Конференции. Ему помогали г-н Силверио Эспинола, главный сотрудник Юридического управления, который исполнял обязанности заместителя секретаря, а также г-н Джон Аугустин, сотрудник Юридического управления, и г-н Арие Джейкоб, младший эксперт, которые выполняли функции помощников секретаря Конференции, и другие должностные лица Организации.

Конференция учредила Комиссию полного состава и следующие комитеты:

Комитет по проверке полномочий

Председатель:	г-н Ш. Ахмад	(Пакистан)
Члены:	г-н А.Ф.О. аль-Момани	(Иордания)
	г-н Ж.К. Абонуан	(Кот-д'Ивуар)
	г-н Э. Эспиноса	(Панама)
	г-н Ю. Макела	(Финляндия)

Редакционный комитет

Председатель:	г-н А. Джонс	(Соединенное Королевство)
Члены:	г-н Э. Мартинес Гондра	(Аргентина)
	г-н А. Гамбоа	(Аргентина)
	г-н Э.Л. Санчес	(Аргентина)
	г-н М.Дж. Моатше	(Ботсвана)
	г-н К. Мосупуква	(Ботсвана)
	г-н Ж. Эскобар	(Бразилия)
	г-н Ж. Перейра	(Бразилия)
	г-н Э.А. Фрич	(Германия)
	г-н С. Гёре	(Германия)
	г-н Д. фон Эльм	(Германия)
	д-р Х. эль-Хуссейни	(Египет)
	г-н Р.К. Махешвари	(Индия)
	г-н Л. Адровер	(Испания)
	г-жа М.-Л. Уидобро	(Испания)
	г-н Ж.Э. Лозон	(Канада)
	г-жа Э.А. Макнаб	(Канада)
	г-жа Д.А. Ачапа	(Кения)
	г-жа Дж.Дж. Титу	(Кения)

г-жа С.Х.Д. Чен	(Китай)
г-н К.И. Квок	(Китай)
г-жа Ф. Лю	(Китай)
г-жа С. Чжан	(Китай)
г-н Ж.К. Абонуан	(Кот-д'Ивуар)
г-н Б. Гнакаре	(Кот-д'Ивуар)
г-н А. Аранго	(Куба)
г-н С. Эйд	(Ливан)
г-н В. Пунусами	(Маврикий)
г-жа М.М. Рейес де Васкес	(Панама)
г-н А. Бавыкин	(Российская Федерация)
г-н Н. Остроумов	(Российская Федерация)
г-н С.А.Ф. аль-Гамди	(Саудовская Аравия)
г-н П. Смит	(Соединенное Королевство)
г-н Д. Хорн	(Соединенные Штаты Америки)
г-н П.Б. Шварцкопф	(Соединенные Штаты Америки)
г-н Д.С. Ньюман	(Соединенные Штаты Америки)
г-н Ж. Куртиал	(Франция)
г-н А. Вейяр	(Франция)
г-н Д. Видо	(Франция)
г-н К.Й.Х. Кьеллин	(Швеция)
г-н А. Аоки	(Япония)
г-жа Дж. Ивама	(Япония)
г-н Й. Кога	(Япония)
г-н Т. Симура	(Япония)

Группа "Друзья Председателя"

Председатель:	г-н Кеннет Раттрей	(Ямайка)
Члены:	г-жа К. Боутон	(Австралия)
	г-н Дж. Алек	(Австралия)
	г-н В.Т. Динь	(Вьетнам)
	г-н Х.Т. Лай	(Вьетнам)
	г-н А.К. Менсах, ком. ав. крыла (отст.)	(Гана)
	д-р Х. эль-Хуссейни	(Египет)
	г-н П.В. Джайакришнан	(Индия)
	г-н В.С. Мадан	(Индия)
	г-н Х.С. Хола	(Индия)
	г-н П. Янг	(Камерун)
	г-н Т. Теку	(Камерун)
	г-н Ж.Э. Лозон	(Канада)
	г-жа Э.А. Макнаб	(Канада)
	г-н Р.Х. Ван	(Китай)
	г-жа С.Х.Д. Чен	(Китай)
	г-жа Ф. Лю	(Китай)
	г-н С. Чжан	(Китай)
	г-н С. Эйд	(Ливан)
	г-н В. Пунусами	(Маврикий)

г-н Р.В. Рукоро	(Намибия)
г-жа Х.Л. Тэлбот	(Новая Зеландия)
г-н А.Дж. Мерсер	(Новая Зеландия)
г-н Ш.Н. Ахмад	(Пакистан)
г-н Н. Шарвани	(Пакистан)
г-н А. Бавыкин	(Российская Федерация)
г-н В. Бордунов	(Российская Федерация)
г-н Н. Остроумов	(Российская Федерация)
г-н С.А.Ф. аль-Гамди	(Саудовская Аравия)
г-н С. Тивари	(Сингапур)
г-жа С.Х. Тан	(Сингапур)
г-н Дж. Кок	(Сингапур)
г-н Х. Махфуд	(Сирийская Арабская Республика)
г-н А. Чичеров	(Словения)
г-н А. Джонс	(Соединенное Королевство)
г-н П. Смит	(Соединенное Королевство)
г-н Д. Хорн	(Соединенные Штаты Америки)
г-н Д.С. Ньюман	(Соединенные Штаты Америки)
г-н П.Б. Шварцкопф	(Соединенные Штаты Америки)
г-н Б.Л. Лабарж	(Соединенные Штаты Америки)
г-н Н. Шатауи	(Тунис)
г-н С. Килани	(Тунис)
г-н С.Б. Боруки	(Уругвай)
г-н Э.Д. Гаггеро	(Уругвай)
г-н Л.Х. Хиорелло-Санчо	(Уругвай)
г-н А. Санес де Леон	(Уругвай)
г-н Ж. Берньер	(Франция)
г-н М.-И. Пессик	(Франция)
г-н Ж. Куртиал	(Франция)
г-н Д. Видо	(Франция)
г-н А.Р. Лисбоа	(Чили)
г-жа А. Вальдес	(Чили)
г-н М. Рифф	(Швейцария)
г-н К.Й.Х. Кьеллин	(Швеция)
г-н Н.А. Градин	(Швеция)
г-н Л.-Г. Мальмберг	(Швеция)
г-н С.Д. Лийанаге	(Шри-Ланка)
г-н А. Аоки	(Япония)
г-н И. Каварабаяси	(Япония)
г-н Т. Симура	(Япония

После рассмотрения Конференция приняла текст *Конвенции для унификации некоторых правил международных воздушных перевозок.*

Упомянутая Конвенция открыта для подписания в Монреале с сего дня.

Кроме того, Конференция приняла на основании консенсуса следующие резолюции:

РЕЗОЛЮЦИЯ № 1

КОНФЕРЕНЦИЯ,

СОЗНАВАЯ важность консолидации и модернизации некоторых правил международных воздушных перевозок с целью восстановления необходимой степени единообразия и ясности таких правил,

ПРИЗНАВАЯ, что требуемую консолидацию и модернизацию этих правил можно в адекватной степени обеспечить лишь коллективными действиями государств в соответствии с принципами и нормами международного права,

ПОДТВЕРЖДАЯ, что достижения и преимущества, воплощенные в *Конвенции для унификации некоторых правил международных воздушных перевозок*, должны быть реализованы на благо всех заинтересованных сторон как можно скорее,

1. *ПРИЗЫВАЕТ* государства как можно скорее ратифицировать *Конвенцию для унификации некоторых правил международных воздушных перевозок*, принятую в Монреале 28 мая 1999 года, и сдать на хранение документы о ратификации в Международную организацию гражданской авиации в соответствии со статьей 53 упомянутой Конвенции;

2. *ПОРУЧАЕТ* Генеральному секретарю Международной организации гражданской авиации незамедлительно довести настоящую резолюцию до сведения государств с вышеуказанными целями.

РЕЗОЛЮЦИЯ № 2

КОНФЕРЕНЦИЯ,

ПРИЗНАВАЯ трагические последствия авиационных происшествий,

УЧИТЫВАЯ тяжелое положение семей жертв таких происшествий или выживших,

ПРИНИМАЯ ВО ВНИМАНИЕ безотлагательные экономические потребности многих таких семей или выживших,

1. *ПРИЗЫВАЕТ* перевозчиков незамедлительно производить предварительные выплаты, основанные на безотлагательных экономических потребностях семей жертв происшествий или выживших;

2. *РЕКОМЕНДУЕТ* государствам – участникам *Конвенции для унификации некоторых правил международных воздушных перевозок*, принятой в Монреале 28 мая 1999 года, принять соответствующие меры в соответствии с национальным законодательством для содействия таким действиям перевозчиков.

РЕЗОЛЮЦИЯ № 3

КОНФЕРЕНЦИЯ,

ПРИЗНАВАЯ первостепенное значение безопасности для упорядоченного развития международной гражданской авиации, и

ПРИЗНАВАЯ значение защиты пассажиров, членов экипажа, работников воздушного транспорта, и

УЧИТЫВАЯ, что транспортировка или перевозка опасных грузов по воздуху регулируется на международном уровне Приложением 18 к *Конвенции о международной гражданской авиации,* и

УЧИТЫВАЯ, что положения указанного Приложения предусматривают, что отправитель, предлагающий какую-либо упаковку с опасным грузом для перевозки по воздуху, убеждается в том, что эти грузы не запрещены к перевозке по воздуху и должным образом классифицированы, упакованы, маркированы, снабжены знаками и сопровождаются надлежащим образом оформленным документом перевозки опасных грузов, как это указано в упомянутом Приложении,

ПОСТАНОВЛЯЕТ, что каждое государство принимает все соответствующие меры для обеспечения непрерывного строгого соблюдения перевозчиками, отправителями и экспедиторами груза Стандартов Приложения 18 к *Конвенции о международной гражданской авиации,* и

ПОСТАНОВЛЯЕТ, что перевозчики, отправители и экспедиторы груза соблюдают все применимые меры безопасности, включая те, которые принимаются в осуществление Приложения 18 к *Конвенции о международной гражданской авиации.*

В УДОСТОВЕРЕНИЕ ЧЕГО делегаты подписали настоящий Заключительный акт.

СОВЕРШЕНО в Монреале двадцать восьмого дня мая месяца одна тысяча девятьсот девяносто девятого года в единственном экземпляре, содержащем шесть аутентичных текстов на русском, английском, арабском, испанском, китайском и французском языках, который будет сдан на хранение в Международную организацию гражданской авиации и заверенная копия которого будет направлена названной Организацией всем правительствам, представленным на Конференции.

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الوثيقة الختامية

للمؤتمر الدولي للقانون الجوي
الذي عقد برعاية منظمة الطيران المدني الدولي
في مونتريال من ١٠ الى ٢٨ مايو / أيار ١٩٩٩

اجتمع المفوضون لدى المؤتمر الدولي للقانون الجوي المعقود برعاية منظمة الطيران المدني الدولي في مونتريال من ١٠ الى ٢٨ مايو/أيار ١٩٩٩ بغرض النظر في مشاريع مواد *اتفاقية توحيد بعض قواعد النقل الجوي الدولي* التي أعدتها اللجنة القانونية لمنظمة الطيران المدني الدولي و *المجموعة الخاصة المعنية بتحديث وتوحيد " نظام وارسو "* التي أنشأها مجلس منظمة الطيران المدني الدولي .

وكانت حكومات الدول التالية البالغ عددها ١١٨ دولة ممثلة في المؤتمر :

دولة أفغانستان الاسلامية
الجمهورية الجزائرية الديمقراطية الشعبية
جمهورية الأرجنتين
أستراليا
جمهورية النمسا
الجمهورية الأذربيجانية
كمنولث جزر البهاما
دولة البحرين
جمهورية بنغلاديش الشعبية
جمهورية بيلاروس
مملكة بلجيكا
بليز
جمهورية بنن
جمهورية بوليفيا
جمهورية بوتسوانا
الجمهورية الاتحادية البرازيلية
بوركينا فاصو
مملكة كمبوديا
جمهورية الكاميرون
كندا
جمهورية الرأس الأخضر
جمهورية أفريقيا الوسطى
جمهورية شيلي
جمهورية الصين الشعبية
جمهورية كولومبيا
جمهورية كوستاريكا
جمهورية كوت ديفوار
جمهورية كوبا
جمهورية قبرص
الجمهورية التشيكية
مملكة الدانمرك
الجمهورية الدومينيكية

جمهورية مصر العربية
جمهورية اثيوبيا الاتحادية الديمقراطية
جمهورية فنلندا
الجمهورية الفرنسية
الجمهورية الغابونية
جمهورية غامبيا
جمهورية ألمانيا الاتحادية
جمهورية غانا
جمهورية غينيا
جمهورية هايتي
جمهورية اليونان
الكرسي الرسولي
جمهورية آيسلندا
جمهورية الهند
جمهورية اندونيسيا
آيرلندا
دولة اسرائيل
جمهورية ايطاليا
جامايكا
اليابان
المملكة الأردنية الهاشمية
جمهورية كينيا
دولة الكويت
الجمهورية اللبنانية
مملكة ليسوتو
جمهورية ليبيريا
جمهورية ليتوانيا
دوقية لوكسمبورغ الكبرى
جمهورية مدغشقر
جمهورية ملاوي
جمهورية مالطة
جمهورية جزر مارشال

جمهورية موريشيوس
الولايات المتحدة المكسيكية
امارة موناكو
منغوليا
المملكة المغربية
جمهورية موزامبيق
جمهورية ناميبيا
مملكة هولندا
نيوزيلندا
جمهورية النيجر
جمهورية نيجيريا الاتحادية
مملكة النرويج
سلطنة عمان
جمهورية باكستان الاسلامية
جمهورية بنما
جمهورية باراغواي
جمهورية بيرو
جمهورية الفلبين
جمهورية بولندا
الجمهورية البرتغالية
دولة قطر
جمهورية كوريا
رومانيا
الاتحاد الروسي
المملكة العربية السعودية
جمهورية السنغال
جمهورية سنغافورة

جمهورية سلوفاكيا
جمهورية سلوفينيا
جمهورية جنوب أفريقيا
مملكة اسبانيا
جمهورية سري لانكا الاشتراكية الديمقراطية
جمهورية السودان
مملكة سوازيلند
مملكة السويد
الاتحاد السويسري
الجمهورية العربية السورية
مملكة تايلند
الجمهورية التوغوية
جمهورية ترينيداد وتوباغو
جمهورية تونس
جمهورية تركيا
جمهورية أوغندا
أوكرانيا
الامارات العربية المتحدة
المملكة المتحدة لبريطانيا العظمى وآيرلندا الشمالية
الولايات المتحدة الأمريكية
جمهورية أوروغواي الشرقية
جمهورية أوزبكستان
جمهورية فنزويلا
جمهورية فيتنام الاشتراكية
الجمهورية اليمنية
جمهورية زامبيا
جمهورية زمبابوي

وكانت المنظمات الدولية الاحدى عشرة التالية ممثلة بمراقبين :

اللجنة الأفريقية للطيران المدني
الهيئة العربية للطيران المدني
اللجنة الأوروبية للطيران المدني
الاتحاد الأوروبي
الاتحاد الدولي للنقل الجوي
غرفة التجارة الدولية
جمعية القانون الدولي
الاتحاد الدولي لشركات التأمين على الطيران
لجنة الطيران المشتركة بين الدول
جمعية أمريكا اللاتينية لقانون الجو والفضاء
لجنة الطيران المدني لأمريكا اللاتينية

وانتخب المؤتمر بالاجماع الدكتور كينيث راتراي (جامايكا) رئيسا وانتخب أيضا بالاجماع نواب الرئيس التالية أسماؤهم :

النائب الأول للرئيس - السيد ك. ج. هـ. كيلين (السويد)
النائب الثاني للرئيس - السيد أ. ك. منساه ، قائد جناح متقاعد (غانا)
النائب الثالث للرئيس - السيد ر. هـ. وانغ (الصين)
النائب الرابع للرئيس - السيد حسين محفوض (الجمهورية العربية السورية)

وكان الأمين العام للمؤتمر هو السيد ريناتو كلاوديو كوستا بيريرا الأمين العام لمنظمة الطيران المدني الدولي ، وكان الأمين التنفيذي هو الدكتور لودفيغ فيبر مدير الادارة القانونية لمنظمة الطيران المدني الدولي ، وساعده السيد سيلفيريو اسبينولا المسؤول القانوني الأول الذي كان نائبا للأمين والسيدان جون أوغستين المسؤول القانوني وأري جاكوب الخبير المساعد اللذان عملا مساعدين لأمين المؤتمر وغيرهم من موظفي المنظمة .

وأنشأ المؤتمر اللجنة العامة واللجان التالية :

لجنة وثائق التفويض

الرئيس :	السيد س. أحمد	(باكستان)
الأعضاء :	السيد ج. ك. أبونوان	(كوت ديفوار)
	السيد ى. ماكيلا	(فنلندا)
	السيد عوني المومني	(الأردن)
	السيد ا. اسبينوزا	(بنما)

لجنة الصياغة

الرئيس :	السيد أ. جونز	(المملكة المتحدة)
الأعضاء :	السيد أ. مارتينيس غوندرا	(الأرجنتين)
	السيد أ. غامبوا	(الأرجنتين)
	السيد ش. ل. سانشيس	(الأرجنتين)
	السيد م. ج. مواتش	(بوتسوانا)
	السيد ك. موسوبوكوا	(بوتسوانا)
	السيد ج. اسكوبار	(البرازيل)
	السيد غ. بيريرا	(البرازيل)
	السيد غ. ش. لوزون	(كندا)
	السيدة ا. أ. ماكناب	(كندا)
	الآنسة س. هـ. د. شيونغ	(الصين)
	السيد ك. ى. كواك	(الصين)
	الآنسة ف. ليو	(الصين)
	الآنسة ج. زانغ	(الصين)
	السيد ج. ك. أبونوان	(كوت ديفوار)
	السيد ب. ناكاري	(كوت ديفوار)
	السيد أ. أرانغو	(كوبا)
	الدكتور خيري الحسيني	(مصر)
	السيد ج. كورتيال	(فرنسا)
	السيد أ. فيايار	(فرنسا)
	السيد د. فيدو	(فرنسا)
	السيد أ. أ. فريتش	(ألمانيا)
	السيد س. غور	(ألمانيا)
	السيد د. فان الم	(ألمانيا)
	السيد ر. ك. ماهيشواري	(الهند)
	السيد أ. أواكي	(اليابان)
	الآنسة ج. ايواما	(اليابان)

السيد ي. كوغا	(اليابان)
السيد ت. شيمورا	(اليابان)
الآنسة د. أ. أشابا	(كينيا)
السيد ج. ج. تيتو	(كينيا)
السيد سليمان عيد	(لبنان)
السيد ف. بونوسامي	(موريشيوس)
السيدة م. رييس دى فاسكيس	(بنما)
السيد أ. بافيكين	(الاتحاد الروسي)
السيد ن. اوستروموف	(الاتحاد الروسي)
السيد سعيد الفرحة الغامدي	(المملكة العربية السعودية)
السيد ل. أدروفر	(اسبانيا)
الآنسة م. ل. هويديبرو	(اسبانيا)
السيد ك. ج. هـ. كيلين	(السويد)
السيد ب. سميث	(المملكة المتحدة)
السيد د. هورن	(الولايات المتحدة)
السيد ب. ب. شوارسكوف	(الولايات المتحدة)
السيد د. س. نيومان	(الولايات المتحدة)

مجموعة أصدقاء الرئيس

الرئيس :	الدكتور كينيث راتراي	(جامايكا)
الأعضاء :	الآنسة س. بوتون	(أستراليا)
	السيد ج. الك	(أستراليا)
	السيد ب. يانغ	(الكاميرون)
	السيد ت. تيكو	(الكاميرون)
	السيد ج. هـ. لوزون	(كندا)
	السيدة ا. أ. ماكناب	(كندا)
	السيد أ. ر. ليسبوا	(شيلي)
	السيدة أ. فالديس	(شيلي)
	السيد ر. هـ. وانغ	(الصين)
	الآنسة س. هـ. د. شونغ	(الصين)
	الآنسة ف. ليو	(الصين)
	الآنسة اكس. زانغ	(الصين)
	الدكتور خيري الحسيني	(مصر)
	السيد ج. برنيير	(فرنسا)
	السيد م. ى. بيسيك	(فرنسا)
	السيد ج. كورتيال	(فرنسا)
	السيد د. فيدو	(فرنسا)
	السيد أ. ك. منساه	(غانا)
	السيد ب. ف. جياكريشنان	(الهند)
	السيد ف. س. مادان	(الهند)
	السيد هـ. س. كولا	(الهند)
	السيد أ. أوكي	(اليابان)
	السيد ى. كاوارباياشي	(اليابان)
	السيد ت. شيمورا	(اليابان)

السيد سليمان عيد	(لبنان)
السيد ف بونوسامي	(موريشيوس)
السيد ر. ف. روكورو	(ناميبيا)
الآنسة ش. ل. تالبوت	(نيوزيلندا)
السيد أ. ج. مركور	(نيوزيلندا)
السيد س. ن. أحمد	(باكستان)
السيد ن. شرواني	(باكستان)
السيد أ. بافيكين	(الاتحاد الروسي)
السيد ف. بوردونوف	(الاتحاد الروسي)
السيد ن. استروموف	(الاتحاد الروسي)
السيد سعيد الفرحة الغامدي	(المملكة العربية السعودية)
السيد س. تيواري	(سنغافورة)
الآنسة س. هـ. تان	(سنغافورة)
السيد ج. كوك	(سنغافورة)
السيد أ. شيشروف	(سلوفينيا)
السيد س. د. لياناج	(سري لانكا)
السيد ك. ج. هـ. كيلين	(السويد)
السيد ن. أ. غرادين	(السويد)
السيد م. ج. مالمبورغ	(السويد)
السيد م. ريف	(سويسرا)
السيد حسين محفوض	(الجمهورية العربية السورية)
السيد نبيل شتاوي	(تونس)
السيد سحبي كيلاني	(تونس)
السيد أ. جونز	(المملكة المتحدة)
السيد ب. سميث	(المملكة المتحدة)
السيد د. هورن	(الولايات المتحدة)
السيد د. س. نيومان	(الولايات المتحدة)
السيد ب. ب. شوارسكوف	(الولايات المتحدة)
السيد ب. ل. لابارج	(الولايات المتحدة)
السيد س. ب. بوروكي	(أوروغواي)
السيد أ. د. كاجيرو	(أوروغواي)
السيد ل. ج. جيوريللو سانشو	(أوروغواي)
السيد أ. سانيس دى ليون	(أوروغواي)
السيد ف. ت. دين	(فيتنام)
السيد اكس. ت. لي	(فيتنام)

واعتمد المؤتمر بعد مداولاته نص *اتفاقية توحيد بعض قواعد النقل الجوي الدولي* .

وفي هذا اليوم فتح باب التوقيع على الاتفاقية في مونتريال .

واعتمد المؤتمر أيضا بالاجماع القرارات التالية :

القرار الأول

ان المؤتمر :

ادراكا منه لأهمية توحيد وتحديث بعض القواعد المتعلقة بالنقل الجوي الدولي ، ليستعيد بذلك المستوى الضروري من توحيد هذه القواعد ووضوحها .

واقرارا منه بأن التوحيد والتحديث الضروريين لهذه القواعد لا يمكن أن يتحققا على النحو الملائم الا من خلال العمل الجماعي للدول وفقا لمبادئ القانون الدولي وقواعده .

واذ يؤكد مجددا على ضرورة تنفيذ الانجازات والمنافع المتضمنة في *اتفاقية توحيد بعض قواعد النقل الجوي الدولي* لصالح كافة الأطراف المعنية في أقرب وقت ممكن .

(١) يحث الدول على التصديق في أقرب وقت ممكن على *اتفاقية توحيد بعض قواعد النقل الجوي الدولي* ، المعتمدة في ٢٨ مايو/أيار ١٩٩٩ في مونتريال وعلى ايداع وثيقة التصديق لدى منظمة الطيران المدني الدولي (الايكاو) وفقا للمادة ٥٣ من الاتفاقية المذكورة .

(٢) يكلف الأمين العام للايكاو بأن يقوم على الفور بتوجيه عناية الدول لهذا القرار تحقيقا للهدف المذكور أعلاه .

القرار الثاني

ان المؤتمر :

ادراكا منه للنتائج المفجعة التي تسفر عنها حوادث الطائرات .

وادراكا منه لمحنة أسر ضحايا هذه الحوادث أو الناجين منها .

واذ يأخذ في الحسبان الاحتياجات الاقتصادية العاجلة لكثير من هذه الأسر أو الناجين .

(١) يحث الناقلين على دفع مبالغ مسبقة ، دون ابطاء ، استنادا الى الاحتياجات الاقتصادية العاجلة لأسر ضحايا حوادث الطائرات أو الناجين منها .

(٢) يشجع الدول الأطراف في *اتفاقية توحيد بعض قواعد النقل الجوي الدولي* ، المعتمدة في ٢٨ مايو/أيار ١٩٩٩ في مونتريال ، على اتخاذ التدابير الملائمة بموجب القانون الوطني لحث الناقلين على القيام بهذا العمل .

القرار الثالث

ان المؤتمر :

ادراكا منه للأهمية الفائقة للسلامة بالنسبة لتطور الطيران المدني الدولي على نحو منظم .

وادراكا منه لأهمية حماية الركاب والطواقم والعاملين في مجال النقل الجوي والجمهور عامة .

وبما أن الملحق الثامن عشر *باتفاقية الطيران المدني الدولي* ينظم على الصعيد الدولي نقل أو حمل البضائع الخطرة بطريق الجو .

وبما أن أحكام الملحق المذكور تتطلب من المرسل الذي يقدم أي طرد بضائع خطرة لنقله بطريق الجو أن يضمن أن البضائع غير ممنوع نقلها بطريق الجو وأنها مصنفة ومعبأة ومؤشرة وموضوع عليها بطاقات على النحو السليم وأنها مصحوبة بوثيقة لنقل البضائع الخطرة منفذة على النحو السليم كما هو محدد في الملحق المذكور .

يقرر ما يلي :

أن تتخذ كل دولة كافة التدابير الملائمة لضمان استمرار الامتثال التام من جانب الناقلين الجويين والشاحنين ومتعهدي نقل البضائع بالقواعد القياسية في الملحق الثامن عشر *باتفاقية الطيران المدني الدولي* .

أن يمتثل الناقلون والمرسلون ومتعهدو نقل البضائع بجميع تدابير السلامة المطبقة ، بما في ذلك تلك المتخذة تطبيقا للملحق الثامن عشر *باتفاقية الطيران المدني الدولي* .

واثباتا لذلك ، قام المندوبون بتوقيع هذه الوثيقة الختامية .

حررت في مونتريال في اليوم الثامن والعشرين من مايو/أيار من عام ألف وتسعمائة وتسعة وتسعين في نصوص رسمية ستة باللغات العربية والانجليزية والفرنسية والاسبانية والروسية والصينية في نسخة وحيدة تودع لدى منظمة الطيران المدني الدولي وترسل هذه المنظمة صورا معتمدة رسميا منها الى كل من الحكومات الممثلة في المؤتمر .

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在国际民用航空组织主持下
于 1999 年 5 月 10 日至 28 日在蒙特利尔举行的
航空法国际会议

最后文件

出席在国际民用航空组织主持下召开的航空法国际会议的全权代表于 1999 年 5 月 10 日至 28 日在蒙特利尔开会，目的是讨论国际民用航空组织法律委员会和国际民用航空组织理事会成立的“华沙体系”现代化和一体化特别小组准备的《统一国际航空运输某些规则的公约》的条款草案。

下列 118 个国家的政府代表出席了会议：

阿富汗伊斯兰国
阿尔及利亚人民民主共和国
阿根廷共和国
澳大利亚
奥地利共和国
阿塞拜疆共和国
巴哈马共同体
巴林国
孟加拉人民共和国
白俄罗斯共和国
比利时王国
伯利兹
贝宁共和国
玻利维亚共和国
博茨瓦纳共和国
巴西联邦共和国
布基纳法索
柬埔寨王国
喀麦隆共和国
加拿大
佛得角共和国
中非共和国
智利共和国
中华人民共和国
哥伦比亚共和国
哥斯达黎加共和国
科特迪瓦共和国
古巴共和国
塞浦路斯共和国
捷克共和国
丹麦王国
多米尼加共和国
阿拉伯埃及共和国
埃塞俄比亚联邦民主共和国
芬兰共和国
法兰西共和国
加蓬共和国
冈比亚共和国
德意志联邦共和国
加纳共和国
几内亚共和国
海地共和国
海伦共和国
梵蒂冈
冰岛共和国
印度共和国
印度尼西亚共和国
爱尔兰
以色列国
意大利共和国
牙买加
日本
约旦哈希姆王国
肯尼亚共和国
科威特国
黎巴嫩共和国
莱索托王国
利比里亚共和国
立陶宛共和国
卢森堡大公国
马达加斯加共和国
马拉维共和国

马耳他共和国
马绍尔群岛共和国
毛里求斯共和国
墨西哥合众国
摩纳哥公国
蒙古
摩洛哥王国
莫桑比克共和国
纳米比亚共和国
荷兰王国
新西兰
尼日尔共和国
尼日利亚联邦共和国
挪威王国
阿曼苏丹国
巴基斯坦伊斯兰共和国
巴拿马共和国
巴拉圭共和国
秘鲁共和国
菲律宾共和国
波兰共和国
葡萄牙共和国
卡塔尔国
大韩民国
罗马尼亚
俄罗斯联邦
沙特阿拉伯王国
塞内加尔共和国
新加坡共和国
斯洛伐克共和国
斯洛文尼亚共和国
南非共和国
西班牙王国
斯里兰卡社会主义民主共和国
苏丹共和国
斯威士兰王国
瑞典王国
瑞士联邦
阿拉伯叙利亚共和国
泰王国
多哥共和国
特立尼达和多巴哥共和国
突尼斯共和国
土耳其共和国
乌干达共和国
乌克兰
阿拉伯联合酋长国
大不列颠和北爱尔兰联合王国
美利坚合众国
乌拉圭东部共和国
乌兹别克斯坦共和国
委内瑞拉共和国
越南社会主义共和国
也门共和国
赞比亚共和国
津巴布韦共和国

下列 11 个国际组织的观察员列席了会议：

非洲民航委员会（ AFCAC ）
阿拉伯民航委员会（ ACAC ）
欧洲民航委员会（ ECAC ）
欧洲共同体（ EC ）
国际航空运输协会（ IATA ）
国际商会（ ICC ）
国际法协会（ ILA ）
航空保险公司国际联盟（ IUAI ）
国际航空委员会（ IAC ）
拉丁美洲航空航天法协会（ ALADA ）
拉丁美洲民航委员会（ LACAC ）

大会一致选举肯尼思·拉特雷博士（牙买加）为主席，并一致选举了下列副主席：

第一副主席——K.J.H. 吉加林先生（瑞典）
第二副主席——A.K. 门萨先生，飞行联队长（退休）（加纳）
第三副主席——王荣华先生（中国）
第四副主席——H. 马福德先生（阿拉伯叙利亚共和国）

大会秘书长是国际民航组织秘书长雷纳多·克拉迪奥·柯斯塔·佩雷拉先生。大会执行秘书是国际民航组织法律局局长卢德威格·韦伯博士，由大会副秘书、首席法律官员席尔威瑞奥·埃斯皮诺拉先生，大会助理秘书、法律官员约翰·奥古斯汀先生和实习专家阿里·贾克比及本组织其他官员予以协助。

大会成立了全体委员会和下列委员会：

授权证书委员会

主席：	S. Ahmad 先生	（巴基斯坦）
成员：	J. K. Abonouan 先生	（科特迪瓦）
	Y. Mäkelä先生	（芬兰）
	A.F.O. Al-Momani 先生	（约旦）
	E. Espionza 先生	（巴拿马）

起草委员会

主席：	A. Jones 先生	（联合王国）
成员：	E. Martí nez Gondra 先生	（阿根廷）
	M.A. Gamboa 先生	（阿根廷）
	H.L. Sánchez 先生	（阿根廷）
	M.J. Moatshe 先生	（博茨瓦纳）
	K. Mosupukwa 先生	（博茨瓦纳）
	J. Escobar 先生	（巴西）
	G. Pereira 先生	（巴西）
	G.H. Lauzon 先生	（加拿大）
	E.A. MacNab 女士	（加拿大）
	张秀霞女士	（中国）
	郭桂源先生	（中国）
	柳芳女士	（中国）
	张星梅女士	（中国）
	J.K. Abonouan 先生	（科特迪瓦）
	B. Gnakare 先生	（科特迪瓦）
	A. Arango 先生	（古巴）
	K. El Hussainy 博士	（埃及）
	J. Courtial 先生	（法国）
	A. Veillard 先生	（法国）

D. Videau 先生	（法国）
E.A. Frietsch 先生	（德国）
S. Göhre 先生	（德国）
D. von Elm 先生	（德国）
R.K. Maheshwari 先生	（印度）
A. Aoki 先生	（日本）
J. Iwama 女士	（日本）
Y. Koga 先生	（日本）
T. Shimura 先生	（日本）
D.A. Achapa 女士	（肯尼亚）
J.J. Titoo 先生	（肯尼亚）
S. Eid 先生	（黎巴嫩）
V. Poonoosamy 先生	（毛里求斯）
M. Reyes de Vásquez 女士	（巴拿马）
A. Bavykin 先生	（俄罗斯联邦）
N. Ostroumov 先生	（俄罗斯联邦）
S.A.F. Al-Ghamdi 先生	（沙特阿拉伯）
L. Adrover 先生	（西班牙）
M.-L. Huidobro 女士	（西班牙）
K.J.H. Kjellin 先生	（瑞典）
P. Smith 先生	（联合王国）
D. Horn 先生	（美国）
P.B. Schwarzkopf 先生	（美国）
D.S. Newman 先生	（美国）

主席之友小组

主席：	Kenneth Rattray 博士	（牙买加）
成员：	C. Boughton 女士	（澳大利亚）
	J. Aleck 先生	（澳大利亚）
	P. Yang 先生	（喀麦隆）
	T. Tekou 先生	（喀麦隆）
	G.H. Lauzon 先生	（加拿大）
	E.A. McNabb 女士	（加拿大）
	A.R. Lisboa 先生	（智利）
	A. Valdés 女士	（智利）
	王荣华先生	（中国）
	袁俊林先生	（中国）
	张秀霞女士	（中国）
	柳芳女士	（中国）
	张星梅女士	（中国）
	K. El Hussainy 博士	（埃及）
	J. Berniere 先生	（法国）
	M-Y. Peissik 先生	（法国）
	J. Courtial 先生	（法国）

D. Videau 先生	（法国）
A.K. Mensah 先生，飞行联队长（退休）	（加纳）
P.V. Jayakrishnan 先生	（印度）
V.S. Madan 先生	（印度）
H.S. Khola 先生	（印度）
A. Aoki 先生	（日本）
Y. Kawarabayashi 先生	（日本）
T. Shimura 先生	（日本）
S. Eid 先生	（黎巴嫩）
V. Poonoosamy 先生	（毛里求斯）
R.V. Rukoro 先生	（纳米比亚）
H.L. Talbot 女士	（新西兰）
A.G. Mercer 先生	（新西兰）
S.N. Ahmad 先生	（巴基斯坦）
N. Sharwani 先生	（巴基斯坦）
A. Bavykin 先生	（俄罗斯联邦）
V. Bordunov 先生	（俄罗斯联邦）
N. Ostroumov 先生	（俄罗斯联邦）
S.A.F. Al-Ghamdi 先生	（沙特阿拉伯）
S. Tiwari 先生	（新加坡）
S.H. Tan 女士	（新加坡）
J. Kok 先生	（新加坡）
A. Čičerov 先生	（斯洛文尼亚）
S.D. Liyanage 先生	（斯里兰卡）
K.J.H. Kjellin 先生	（瑞典）
N.A. Gradin 先生	（瑞典）
L.-G. Malmberg 先生	（瑞典）
M. Ryff 先生	（瑞士）
H. Mahfoud 先生	（阿拉伯叙利亚共和国）
N. Chataoui 先生	（突尼斯）
S. Kilani 先生	（突尼斯）
A. Jones 先生	（联合王国）
P. Smith 先生	（联合王国）
D. Horn 先生	（美国）
D.S. Newman 先生	（美国）
P.B. Schwarzkopf 先生	（美国）
B.L. Labarge 先生	（美国）
C.B. Borucki 先生	（乌拉圭）
E.D. Gaggero 先生	（乌拉圭）
L.G. Giorello-sancho 先生	（乌拉圭）
A. Sanes de Leon 先生	（乌拉圭）
V.T. Dinh 先生	（越南）
X.T. Lai 先生	（越南）

经过讨论，大会通过了《统一国际航空运输某些规则的公约》。

该公约今天在蒙特利尔开放签字。

大会还一致通过了下述决议：

第一号决议

注意到国际航空运输某些规则的一体化和现代化的重要性，从而使这些规则的统一和清晰恢复到必要的程度；

认识到这些规则的必要的一体化和现代化只能按照国际法原则和规则通过集体的国家行动才能达到；

确认为了有关各方的利益，应当尽快实施体现在《统一国际航空运输某些规则的公约》中的成果和利益。

会议：

1. 敦促各国尽快批准于 1999 年 5 月 28 日在蒙特利尔通过的《统一国际航空运输某些规则的公约》并根据该公约第 53 条将批准书交存于国际民用航空组织；

2. 指示国际民用航空组织秘书长为上述目的立刻提请各国注意该决议。

第二号决议

认识到航空器事故造成的悲剧性后果；

注意到此种事故遇难者的家庭或幸存者的困境；

考虑到此种家庭或幸存者立即的经济需要，

会议：

1. 敦促承运人根据事故遇难者的家庭或事故幸存者立即的经济需要及时地支付预付款；

2. 鼓励 1999 年 5 月 28 日在蒙特利尔通过的《统一国际航空运输某些规则的公约》的当事国根据国家法律采取适当措施促使承运人采取此种行动。

第三号决议

认识到国际民用航空有序发展的安全的重要性；和

认识到保护旅客、机组、航空运输工作者和一般群众的重要性；和

鉴于所述附件的规定要求提交航空运输危险品包件的运货人保证货物不是航空运输禁运品，而且进行了适当的分类、包装、标记和标签并附有所述附件规定的适当处理过的危险品运输文件；

会议决定：

每个国家采取一切适当的措施保证承运人、运货人和货运代理人继续严格遵守《国际民用航空公约》附件 18 的标准；和

承运人、运货人和货运代理人遵守所有适用的安全措施，包括引自《国际民用航空公约》附件 18 的那些措施。

下列代表已在最后文件上签字，**以昭信守**。

本文件以中文、阿拉伯文、英文、法文、俄文和西班文六种作准文本的单一文本的形式于一九九九年五月二十八日**订于**蒙特利尔，该文本应存放于国际民用航空组织，并且该组织应当将核证无误副本分送给出席会议的每一国政府。

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DCW Drafting Committee
Flimsy No. 1
18/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

MENTAL INJURY

(Presented by the United Kingdom)

In Article 16.1 for "bodily injury" substitute "bodily or mental injury".

Insert Article 16.2:

> "In this Article the term "mental injury", in a case where there is no accompanying bodily injury, means an injury resulting in a mental impairment which has a significant adverse effect on the health of the passenger."

Present 16.2 to 16.4 to become 16.3 to 16.5.

– END –

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DCW Drafting Committee
Flimsy No. 2
19/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

MENTAL INJURY

(Presented by the Chairman of the Drafting Committee)

OPTION 1

In Article 16.1 for "bodily injury" say "bodily or mental injury".

Insert Article 16.2:

> "In this Article the term "mental injury", in a case where there is no accompanying bodily injury, means one which [significantly] [substantially] impairs the health of the passenger."

16.2 to 16.4 to become 16.3 to 16.5.

– END –

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DCW Drafting Committee
Flimsy No. 3
21/5/99

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

FINAL CLAUSES

(Presented by Singapore)

ARTICLE 49

Taking into account the discussions in the Drafting Committee on 21 May 1999, we propose the following changes to Article 49 with a view to aligning the text to international treaty practice. In putting forward the text we have taken into account the various suggestions made by colleagues. The changes will allow the practice in the various countries to be accommodated.

1. Replace Article 49 para. 1 last sentence by:

   "This Convention shall be subject to ratification by States which have signed it".

2. Delete the first sentence of para. 2 and replace by:

   "Any State which does not sign this Convention may accept, approve of or accede to it at any time."

3. The second sentence of para. 2 becomes a new para. 3, and the remaining paras. are to be renumbered accordingly.

4. The amended text of paras. 1 to 3 would read as follows:

   "1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until [it enters into force in accordance with paragraph 3 of this Article.] [... (date)] ~~Any State which does not sign this Convention may accept, approve of or accede to it at any time.~~ This Convention shall be subject to ratification by States which have signed it.

2. Any State which does not sign this Convention may accept, approve of or accede to it at any time. ~~This Convention shall be subject to ratification, acceptance, approval or accession by States~~.

3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated the Depositary.

– END –

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONSENSUS PACKAGE

(Presented by the President of the Conference)

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable to the extent that the death or injury resulted from the state of health of the passenger.

2. In this Article the term 'injury', means bodily injury, or mental injury which significantly impairs the health of the passenger.

3. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

4. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

5. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Alternative 1: [Article 20 - Compensation in Case of Death or Injury of Passengers

1. For damages arising under Article 16, paragraph 1 not exceeding 100,000 SDR, the carrier shall not be able to exclude or limit its liability.

2. The liability of the carrier exceeding the amount of 100 000 SDR shall be subject to proof by the claimant that the damage sustained was due to the fault or neglect of the carrier or its servants or agents acting within their scope of employment.

3. Article 19 shall apply to the preceding paragraphs 1. and 2.]

Alternative 2: [Article 20 - Compensation in Case of Death or Injury of Passengers

1. For damages arising under Article 16, paragraph 1 not exceeding 100 000 SDR, the carrier shall not be able to exclude or limit its liability.

2. Subject to paragraph 3 below, the carrier shall not be liable for damages arising under Article 16 paragraph 1, to the extent that they exceed 100 000 SDR if the carrier proves that:

(a) the carrier and its servants and agents had taken all necessary measures to avoid the damage; or

(b) it was impossible for the carrier or its servants and agents to take such measures; or

(c) such damage was solely due to the negligence or other wrongful act or omission of a third party.

3. The liability of the carrier exceeding the amount of [ ] SDR shall be subject to proof by the claimant that the damage sustained was due to the fault or neglect of the carrier or its servants or agents acting within their scope of employment.]

Article 21 A - Limits of Liability

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons the liability of the carrier for each passenger is limited to [7 500] Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to [3 000] Special Drawing Rights for each passenger unless the passenger has made, at the time when checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of [17] Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of loss, damage or delay of part of the 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 cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1, 2 and 3 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 20 and 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, including interest. 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.

Article 22 A - Freedom to Contract

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

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or, having regard to the specific characteristics of air transport, in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates air transport services and in which it conducts its business for the carriage by air from premises which it leases or owns.

3. For the purposes of paragraph 2, the expression "principal and permanent residence" shall mean:

- either the passenger's main place of abode during the twelve months immediately preceding the accident;

- or the main place of abode of the passenger's spouse or minor children or, if the passenger is a minor, of his or her parents, during the twelve months immediately preceding the accident;

- or the passenger's place of employment at the time of the accident;

- or, if the passenger is an official of a State Party serving in another State, whether a State Party or not, the headquarters of the authority to which that official reports."

4. Questions of procedure shall be governed by the law of the Court seised of the case. The court may decline to exercise jurisdiction on the basis of the additional jurisdiction set out in paragraph 2 of this Article, if the carrier proves

a) that having regard to the circumstances of the accident and the issues to be determined it would place too onerous a burden on the carrier for the case to be heard and determined in that jurisdiction, and

b) there exists another jurisdiction in which the case may be properly, and with a view to the interests of all the parties, more fairly and conveniently be determined.

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONSENSUS PACKAGE

(Presented by the President of the Conference)

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable to the extent that the death or injury resulted from the state of health of the passenger.

2. In this Article the term 'injury', means bodily injury, or mental injury associated with bodily injury, or mental injury which significantly impairs the health of the passenger.

3. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

4. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

5. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 20 - Compensation in Case of Death or Injury of Passengers

1. For damages arising under Article 16, paragraph 1 not exceeding 100 000 Special Drawing Rights, the carrier shall not be able to exclude or limit its liability.

2. Subject to paragraph 3 below, the carrier shall not be liable for damages arising under Article 16 paragraph 1, to the extent that they exceed 100 000 Special Drawing Rights if the carrier proves that:

(a) the carrier and its servants and agents had taken all necessary measures to avoid the damage; or

(b) it was impossible for the carrier or its servants and agents to take such measures; or

(c) such damage was solely due to the negligence or other wrongful act or omission of a third party.

3. The liability of the carrier exceeding the amount of [800 000] Special Drawing Rights shall be subject to proof by the claimant that the damage sustained was due to the fault or neglect of the carrier or its servants or agents acting within their scope of employment.

4. Article 19 shall apply to the preceding paragraphs 1 to 3.

Article 21 A - Limits of Liability

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of loss, damage or delay of part of the 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 cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 20 and 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, including interest. 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.

Article 22 A - Freedom to Contract

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

Article 22 B - Advance Payments

The carrier shall, in accordance with its national law, make advance payments without delay to a natural person or persons who are entitled to compensation in order to meet the immediate economic needs of such persons.

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article or, having regard to the specific characteristics of air transport, in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates air transport services and in which it conducts its business for the carriage by air from premises which it leases or owns.

3. For the purposes of paragraph 2, the expression "principal and permanent residence" shall mean the passenger's main place of abode during the twelve months preceding the accident. The criterion of the nationality of the passenger shall not be used for determining such residence.

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 10 to 28 May 1999)

DRAFT CONSENSUS PACKAGE

(Presented by the President of the Conference)

Article 16 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable to the extent that the death or injury resulted from the state of health of the passenger.

2. In this Article the term 'injury', means bodily injury, or mental injury associated with bodily injury, or other mental injury which so seriously and adversely affects the health of the passenger that his or her ability to sustain the day-to-day activities of an ordinary person is significantly impaired.

3. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault.

4. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

5. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 19 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. For the avoidance of doubt, this Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 20.

Article 20 - Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 16 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 16 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 21 A - Limits of Liability

1. In the case of damage caused by delay as specified in Article 18 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the 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 destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 20 and 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, including interest. 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.

Article 22 A - Freedom to Contract *

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 22 B - Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payment shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 27 - Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the Court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the Court at the place of destination.

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* The Final Act will include a resolution urging carriers to make such payments and encouraging State Parties to take appropriate measures to promote such actions

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the Courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.**

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the Court seised of the case.

– END –

** The Final Act will include a statement that paragraph 2 of this Article is included because of the special nature of international carriage by air.

CONVENTION

for the Unification of Certain Rules for International Carriage by Air

Done at Montreal on 28 May 1999

CONVENTION

pour l'unification de certaines règles relatives au transport aérien international

Faite à Montréal le 28 mai 1999

CONVENIO

para la unificación de ciertas reglas para el transporte aéreo internacional

Hecho en Montreal el 28 de mayo de 1999

КОНВЕНЦИЯ

для унификации некоторых правил международных воздушных перевозок

Совершена в Монреале 28 мая 1999 года

《统一国际航空运输某些规则的公约》

于 1999 年 5 月 28 日

在蒙特利尔签订

اتفاقيـــة

توحيد بعض قواعد النقل الجوي الدولي

حررت في مونتريال في ٢٨ مايو/ أيار ١٩٩٩

1999

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
国际民用航空组织
منظمـــة الطيـــران المدنـــي الدولـــي

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CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 — Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State 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 carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 — Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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 cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 — Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 6 — Document Relating to the Nature of the Cargo

The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 — Description of Air Waybill

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 by the carrier. The third part shall be signed by the carrier who shall hand it 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, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 — Documentation for Multiple Packages

When there is more than one package:

(a) the carrier of 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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 — Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 — Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 — Evidentiary Value of Documentation

1. The air waybill or the cargo receipt 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 cargo receipt 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 or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

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 cannot be communicated with, the consignor resumes its right of disposition.

Article 13 — Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, 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 — Enforcement of the Rights of Consignor and Consignee

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

Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties

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

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

Article 16 — Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities 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, its 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 and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers — Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo

1. 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 event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway 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 transhipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the 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 destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and 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, including interest. 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.

Article 23 — Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 — Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval,

the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 — Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions

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

Article 27 — Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28 — Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims

In the carriage of passengers, baggage and 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 such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, 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 31 — Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

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 checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable

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 or her estate.

Article 33 — Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft,

or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34 — Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35 — Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of 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 that period shall be determined by the law of the court seised of the case.

Article 36 — Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which 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 which 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 37 — Right of Recourse against Third Parties

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

Combined Carriage

Article 38 — Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions

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

Article 43 — Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44 — Aggregation of Damages

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

Article 45 — Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately.

If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 46 — Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47 — Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter 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 Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Other Provisions

Article 49 — Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50 — Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 — Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52 — Definition of Days

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

Chapter VII

Final Clauses

Article 53 — Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 54.

Article 54 — Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 — Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier*, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by

both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 — States with more than one System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57 — Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

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