1955

Warsaw Convention of 1929, As Amended by the Protocol Signed at the Hague, on September 28, 1955

K. M. Beumont

Follow this and additional works at: https://scholar.smu.edu/jalc

Recommended Citation
https://scholar.smu.edu/jalc/vol22/iss4/3

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.
THE WARSAW CONVENTION OF 1929, AS AMENDED BY THE PROTOCOL SIGNED AT THE HAGUE, ON SEPTEMBER 28, 1955

BY K. M. BEAUMONT

C.B.E., D.S.O., M.A. Senior Partner, law firm of Beaumont & Son, London, England; an original Member of the Legal Committee of the I.A.T.A. and served on that Committee for about twenty years; a Member of the C.I.T.E.J.A. from 1945 until that Committee was superseded by the Legal Committee of the I.C.A.O., since when he has served as a member of the latter. Joint author, with C. N. Shawcross, K.C., M.P., of "Air Law," 1945.

AFTER working for more than three weeks at The Hague, delegations from forty-three States, assisted by observers from eight International Organizations, produced a Protocol which was signed immediately by delegates on behalf of twenty-six States. The Protocol provides for modification of the Convention in many material respects. In fact, the Conference swallowed even larger camels than had been proposed by the Legal Committee of I.C.A.O., at its meeting in Rio in September, 1953, while straining at gnats, represented by minor drafting revisions in the unamended portions of the Convention. In the result, the Convention as amended by the Protocol constitutes a greatly improved measure considerably longer than the Convention, though certain anomalies remain which could have been avoided if a few more drafting revisions had been made or if the combined documents had been consolidated into an entirely new Convention. However, there has for some time been determined opposition by certain States to a new Convention, partly because these considered that it would be easier for the legislatures of the States concerned to adopt a modifying Protocol; and at The Hague there was not enough time to consider properly a number of possible modifications which fell outside the scope of the draft Protocol prepared by the Legal Committee.

In the opinion of the writer, who has for about twenty years been intimately concerned with proposals for revision of the Convention, the amendments comprised in the Protocol are sound, practical and wise. As these were, on the whole, adopted by considerable majorities, is it to be hoped that not too long a time will elapse before the Convention as amended by the Protocol comes into operation, for which, however, ratification by thirty States is required, this being two-thirds of the number of States which are now High Contracting Parties to the Convention.

In order to make comprehensible the following commentary, there is annexed hereto a consolidated document setting out the Convention as it would appear when the Protocol amendments are included or

414
HAGUE AMENDMENTS TO WARSAW CONVENTION

It must be remembered that the unamended portions of the Convention remain officially in the French language only, whereas the Protocol is in English, French and Spanish, with the French text to prevail in the event of inconsistency.

**ARTICLE 1 (1).** Although it was pointed out that this paragraph refers to “persons” instead of “passengers,” as used elsewhere, and to “luggage or goods,” whereas the Protocol refers to “baggage” and “cargo,” the Conference decided to make no change so as to assimilate the expressions, partly no doubt because in the French text of both documents the words “baggages” and “merchandises” are used.

**Art. 1 (2) has been redrafted,** substituting “agreement” for “contract,” eliminating reference to “Sovereignty, Suzerainty, Mandate or Authority,” and substituting “State” for “Power.” (On this subject see also new Article 40A of the Convention and Final Clauses of the Protocol.)

**ART. 1 (3).** Similar corresponding changes were made in this paragraph.

**ART. 2 (2).** This was changed to include all mail and postal packages without qualification.

As the first chapter of the Convention is headed “Scope—Definitions,” it would have seemed proper to include the new Article 40A in this, because 40A contains only definitions; and it might have been advantageous to include also in Article 2 an assimilation of the expressions “air consignment note” and “air way bill,” “luggage ticket” and “baggage check”; and perhaps a definition of “carrier,” since this has created difficulty—for instance whether the party who makes the contract to carry or the party who operates the contracted carriage should be so regarded. The answer to this question may not always be easy, especially in connection with certain charter arrangements. Article 30 of the Convention clarifies the position only as to who is to be liable (as distinct from who has to be regarded as the carrier) in the case of carriage by successive carriers. In the Paris draft of January, 1952, a definition of “carrier” was suggested. Although the writer considers that definitions are desirable and useful in an international document, some of his good friends and colleagues on the Legal Committee of I.C.A.O. are fiercely opposed to them. The Conference really did not have time to consider whether some definitions and assimilations, as referred to above, should be included, apart from those comprised in the new Article 40A. Differences between expressions used in the Convention and in the Protocol can probably be cleared up in the enabling legislation of most States which ratify the Protocol, at any rate in cases where enabling legislation is required, as is usual.

**ART. 3 (1).** The Protocol substitutes a completely new paragraph, requiring only the places of departure and destination and, if necessary, an agreed stopping place, to be mentioned, in order to establish whether or not the carriage is “international,” as defined by the Convention. In addition a notice must be included in the ticket to the
effect that the Convention may apply and that the Carriers' liability may be limited. Many delegations attached great importance to such a notice which, in the form set out in the Protocol, should give no trouble to Carriers.

**ART. 3 (2)** is entirely new, and clears up anomalies and obscurities in the corresponding paragraph of the Convention. Under the new provision, the carrier loses the benefit of the limited liability under Article 22 if he allows a passenger to embark without a ticket or if the ticket does not include the notice above referred to. He remains entitled to his defenses under the Convention.

**ART. 4.** The Protocol substitutes provisions concerning the baggage check exactly similar to those referred to above in connection with the passenger ticket.

**ART. 5.** No change was made in this, although the English text makes specific reference to an "air consignment note" being required, and the Protocol refers throughout to an air way-bill. This Article also appears to involve a certain conflict with Article 33, when the former talks about the consignor having a right to require the carrier to accept the document, whereas Article 33 entitles the Carrier to refuse to enter into any contract of carriage. Presumably the intention is that the consignor can only require the carrier to accept the document when a contract of carriage is agreed with the Carrier.

**ART. 6 (3).** The amended paragraph in the Protocol clears up a practical difficulty. The Carrier is no longer required to sign on acceptance of the cargo, which is often impossible when this is collected by an Agent. Under the new paragraph, he merely has to sign before the cargo is loaded on the aircraft.

**ART. 8 of the Convention,** with its numerous obligatory and other particulars has been substituted in the Protocol by simple provisions corresponding exactly with those applicable to the passenger ticket and baggage check.

**ART. 9** has been amended by the Protocol in a manner corresponding with Articles 3 and 4, and the amendment in Article 6 (3).

**ART. 10 (2).** The Protocol provides a redraft and amplification of this paragraph.

**ARTS. 11, 12, 13 and 14** have not been amended. At one time it was thought that the right of stoppage *in transitu* comprised in Article 12 constituted an obstacle to making the air way-bill negotiable because of the use of the word "varied" in Article 15 (2). But, when the matter was considered by the Sub-Committee of the Legal Committee constituted for the purpose, it was pointed out that the word used in the French text was "dérogeant," which would cover complete derogation of Articles 12, 13 and 14; and the Conference accepted the opinion of the Sub-Committee that there is in fact nothing in the Convention which precludes the air way-bill being made negotiable and the provisions of Articles 12, 13 and 14 being varied or eliminated.
ART. 15. The Protocol added a new paragraph (3) to place upon record the opinion referred to above.

ART. 17 was not altered by the Protocol, although (a) the expression “wounding of a passenger or any other bodily injury suffered by a passenger” has been subject to considerable criticism. It has been pointed out that, in addition to mental injuries, there are possible, in air travel, injuries which cannot be called bodily injuries; also (b) the word “accident” might not cover such occurrences as loss of pressure or bumps. Consequently some delegates would have preferred to change the paragraph to read “in the event of the death of or injury to a passenger, if the occurrence which caused the damage . . . etc.” It should be noted that the word “occurrence” is used in Article 18 (1), and the word “event” in Article 18 (3). It should be noted that Article 18 (1) makes reference only to registered baggage or goods, omitting reference to hand baggage.

ART. 19 was also left unaltered, although its meaning is obscure, since there is no definition as to what constitutes delay, and consequently, this must be left to the Courts, which, in different countries, may apply conflicting definitions. The Paris draft of January, 1952, included provisions on the subject, which, however, were rejected by the Legal Committee in Rio, and the Conference at The Hague was unwilling throughout the meeting to consider questions which were not included in the draft Protocol prepared in Rio, partly because it was felt that the time available would not suffice.

ART. 20 (1). Once again this paragraph was considered, and once again no revision proposed obtained the required majority although it is obvious that, if all “necessary” measures are proved to have been taken, the damage could not have occurred. Suggestions were again made that “reasonable” or “proper” or “practicable” should be substituted for “necessary,” and that “impracticable” should be substituted for “impossible,” but without success; so it still rests with the Courts to endeavor to make sense out of a paragraph which, if read literally, makes nonsense.

ART. 20 (2) is deleted by the Protocol, so that the same rule for disproving liability now prevails for baggage and cargo as for passengers. This is obviously sensible because most aircraft carry baggage or cargo as well as passengers.

ART. 21 was left unamended, although it would seem that the formula comprised in Article 6 (1) of the Rome Convention of 1952, is much clearer, and leaves less chance of conflicting decisions being given in the Courts of different States on the subject of contributory negligence.

ART. 22 was replaced in the Protocol by a new Article. In paragraph (1) the limit of passenger liability was doubled to the figure of 250,000 francs. The expression “Court seised of the case,” although bad English, was retained, instead of “Court trying the action.” In paragraph (2), the expression “special declaration of value at delivery”
was changed to read "special declaration of interest in delivery at destination." The latter is a correct translation of the meaning of the French text; and the alteration is very necessary because one distinguished observer expressed the view that "value at delivery" meant delivery to the Carrier, which is certainly not the meaning of the French text, which expresses a well-known principle. As the French word "expéditeur" means both passenger and consignor, it was necessary in the Protocol to use both words in the English text, whereas in the Convention only the word "consignor" appears, without reference to the passenger, although baggage as well as cargo is involved.

The Protocol also includes a new paragraph (2) (b), to deal with cases of partial loss of registered baggage and cargo, concerning which at present different principles are applied by different carriers.

The Protocol also includes an entirely new paragraph (4) providing for the award of certain Court costs and other litigation expenses. This suggestion emanated from the United States delegation, consequent upon difficulties in this connection which exist in American Courts.

The Protocol also provides that an award of Court costs and other expenses of litigation may not be made if, within a period of six months from the date of the occurrence causing the damage, or the commencement of the action, whichever is the latter, a sum in settlement of the claim has been offered by the Carrier in writing, at least as great as the damages awarded. This in effect applies the principle of payment into Court, in order to avoid payment of the Plaintiffs' costs, which is well known in the English legal system.


**Art. 23.** The Protocol has added a new paragraph so as to render the existing Article 23 inapplicable when the damage results from inherent defect, quality or vice of the cargo carried, thereby applying the principle of the Brussels Maritime Convention of 1924.

**Art. 25.** The Protocol includes an entirely new Article, which eliminates the difficulties experienced by the use of the word "dol" (willful misconduct) or its equivalent, which has been held in certain Courts to mean "faute lourde" (gross negligence). The new formula follows closely the definition of "willful misconduct," as laid down by Courts applying English Law, and includes the notion of recklessness with knowledge that damage would probably result. In order to make the Carrier liable without limit for the act or omission of his servant or agent, it must also be proved that he was acting within the scope of his employment, but not within the scope of his authority, as prescribed by Article 12 of the Rome Convention of 1952. The Protocol makes much clearer an important legal principle. It should be noted also that the new Article refers only to the limits of liability specified in Article 22, whereas the existing Article refers to "the provisions of this Convention which exclude or limit" the liability of the carrier,
presumably including such provisions as those appearing in Articles 26 and 29.

ART. 25A. The Protocol includes an entirely new Article which has the effect of enabling a servant or agent, acting within the scope of his employment, to avail himself of the same limits of liability as those applicable to a carrier. Some experts have considered that the limits in Article 22 are already applicable to servants and agents, although the carrier alone is mentioned therein. Others contend that these limits are not applicable to servants or agents, who consequently can be sued separately in tort or delict without limit. In some cases, servants and agents are indemnified against such claims in their employment agreements. In such cases, the carrier, though himself not liable, might have to pay unlimited compensation on behalf of a servant or agent. The new Article 25A sets at rest doubts on this subject and regularizes the position.

The Sub-Committee of the Legal Committee constituted to study questions arising from hire and charter of aircraft suggested that, after Article 25, there should be inserted a new provision as follows:

“Subject to the provisions of Article 30, when the air carriage is performed by a person other than the one in whose name the agreement to carry was concluded, each of such persons shall be jointly and severally liable as a Carrier in accordance with the provisions of the Convention. Nevertheless, if only one of such persons is liable under Article 25, the excess above the limits comprised in Article 22 shall be recoverable only from that person.”

This formula follows closely one included in the Paris draft of 1952, and constitutes an attempt to give protection to passengers and owners of cargo in the circumstances mentioned, which may arise in cases where the contracting party charters space in an aircraft operated by another. Provided that the liability is covered by insurance, no hardship could result for either of such parties. However, the Conference rejected the proposal. It is curious that, whereas Article 30 deals with the question of liability in the case of successive carriers, and refers to certain carriers as being deemed to be contracting parties, the Convention nowhere makes clear who is to be regarded as the carrier in the case of charters, or indeed, where successive carriage is involved.

ART. 26. The writer made a determined effort to persuade the Conference to adopt an entirely new Article on the lines proposed in the Paris draft of 1952, pointing out the deficiencies of the present Article, including omission of the notice of claim to be given in the case of death or personal injury, and that no period is mentioned for lodging claims when baggage (registered or hand) or cargo is lost or destroyed or cannot be found. Paragraph (2) refers only to date of receipt or when it is placed at the disposal of the passenger or consignee. However, the Conference would not agree to make any change until Article 35 came to be discussed, and an extraordinary resolution
(subsequently revoked) dealing with "working days," regardless of the fact that this expression has a different meaning in every country and sometimes several different meanings in the same country. Eventually it was decided to leave Article 35 alone, but to alter paragraph (2) of Article 26, changing three, seven and fourteen days mentioned therein to seven, fourteen and twenty-one days respectively.

Art. 29. Although the formulae comprised in Article 21 of the Rome Convention of 1952, would seem to be preferable to those in the existing Convention of Warsaw, no change was made in this Article. This was one of the cases in which the Conference refused to consider a matter, partly because it was not referred to in the Rio draft Protocol and partly because there was too little time.

Art. 34 was replaced by an entirely new Article in the Protocol, omitting the reference to experimental trials with a view to the establishment of a regular air line.

Arts. 36 to 41 were left unamended. But, after the Protocol comes into force, as provided in Article XXII of the Protocol, these Articles will be ineffective and overridden by the Final Clauses of the Protocol.

Art. 40A. This new Article has already been referred to. It merely defines "High Contracting Party" and "territory," and might have been included in Chapter I which purports to include definitions.

**Chapters II and III of the Protocol (Articles XVIII to XXVII)**

These are entirely new and relate only to the Protocol and not to the Convention. Article XVIII substitutes "parties to the Protocol" for "High Contracting Parties." Article XIX provides that the Convention and the Protocol (when in force) are to be read as a single instrument to be known as the *Warsaw Convention as amended at The Hague, 1955*.

Article XXI provides that ratification of the Protocol by any State not a party to the Convention shall have effect as adherence to the Convention as amended by the Protocol; and also for the deposit of instruments of ratification with the Government of the People's Republic of Poland. At one stage, this latter provision looked like causing a certain amount of trouble, because there had been an alternative proposal that deposits should be made with I.C.A.C. However, eventually the proposal was adopted by twelve votes to three, with many abstentions; and so diplomatic tension was relieved and the result was suitably celebrated at subsequent appropriate cocktail parties.

Protocol Art. XXII requires thirty ratifications before the Protocol comes into force, ninety days after the 30th ratification. As, however, the amendments were generally supported by large majorities, there is reason to hope that the Protocol may become effective before very long.
ART. XXIII follows the lines of Article XXI, and Articles XXIV and XXV are normal Final Clauses for modern Conventions.

ART. XXVI of the Protocol precludes reservations except concerning aircraft the whole capacity of which is reserved by or on behalf of military authorities. A provision to this effect had originally been proposed for incorporation in Article 2.

A technical difficulty may arise consequent upon the fact that ninety days after a State ratifies the Protocol it is bound thereby, whereas under Article 39 of the Convention, denunciation thereof only becomes effective after six months. Therefore, there is a possibility that a State, already a party to the Convention, by ratifying the Protocol, might, for a period between ninety days and six months, be in breach of the Convention. No difficulty need arise after the Protocol comes into force through ratification or adherence of thirty States, because then a Contracting State of the Convention could denounce this, and, ninety days before the expiry of six months, ratify or adhere to the Protocol, so that the expiry of the denunciation of the Convention would coincide with ratification of the Protocol becoming effective. But, if a Convention State wants to ratify the Protocol before it is in force — so as to become one of the first thirty Protocol States — there is an obvious difficulty. If that State denounces the Convention, and, at the end of six months, there are not thirty Protocol States, the State concerned, even if it had ratified the Protocol ninety days before the denunciation has become effective, would be bound neither by the Convention nor by the Convention as amended by the Protocol, when the denunciation of the Convention became effective. This difficulty did not seem to trouble those delegates who appreciated it. Probably arrangements could be made for a number of States, not less than thirty, all to denounce the Convention at the same time, and all to ratify the Protocol ninety days before the denunciation of the Convention becomes effective.

The attestation clause of the Protocol provides that it is drawn up in three authentic texts in the English, French and Spanish languages, and that in case of any inconsistency, the text in the French language in which the Convention was drawn shall prevail.

Considering the very large number of States represented at the Conference, the exceptionally large number of delegates, many of whom had not previously attended a meeting dealing with the subject matter, the limited time available and the complexity of some of the problems involved, it was remarkable that such a large measure of agreement was reached and that so many useful and practical amendments to the Convention were adopted.

In conclusion, perhaps the writer may be excused for adding that, at the end of the meeting, he was particularly touched by and appreciative of the remarks, however undeserved, of his old friend and colleague, Maitre Garnault, to the effect that it was largely due to the
writer's efforts, in various capacities over a period of about twenty years, that the results comprised in the Protocol had been achieved.

THE CONVENTION OF WARSAW OF 12TH OCTOBER, 1929,
AS AMENDED BY THE HAGUE PROTOCOL OF 28TH SEPTEMBER, 1955

[English Text. The new and amended provisions are in italics. The English text of the unamended provisions is that Scheduled to the Carriage by Air Act, 1932. The unofficial American text differs from this in certain respects.]

CHAPTER I—SCOPE—DEFINITIONS

Article 1

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

(2) For the purpose 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 is a break in the carriage or a transhipment, are situate either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

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

Article 2

(1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

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

CHAPTER II—DOCUMENTS OF CARRIAGE

SECTION 1—PASSENGER TICKET

Article 3

(1) In respect of the carriage of passengers a ticket shall be delivered containing:

(a) An indication of the places of departure and destination;

(b) If the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) A notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of
(2) The passenger ticket shall constitute prima facie evidence of the conclusion and the conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1) (c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

SECTION 2 — LUGGAGE TICKET

Article 4

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

(a) An indication of the places of departure and destination;

(b) If the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) A notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

(2) The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3 paragraph (1) (c)) does not include the notice required by paragraph (1) (c), he shall not be entitled to avail himself of the provisions of Article 22 paragraph (2).

SECTION 3 — AIR CONSIGNMENT NOTE

Article 5

(1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

(1) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier" and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany carriers for death or personal injury and in respect of loss of or damage to baggage.
the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

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

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

Article 8

The air way-bill shall contain:

(a) An indication of the places of departure and destination;

(b) If the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) A notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

Article 9

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

Article 10

(1) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

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

Article 11

(1) The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The statements in the air consignment note relating to the weight, dimensions and packing of the goods, 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 goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stop-
ping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

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

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage sustained which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

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

**Article 13**

(1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

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

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

**Article 14**

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

**Article 15**

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

(2) The provisions of Articles 12, 13 and 14, can only be varied by express provision in the air consignment note.

(3) *Nothing in this Convention prevents the issue of a negotiable air way-bill.*

**Article 16**

(1) The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.
CHAPTER III — LIABILITY OF THE CARRIER

Article 17

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

Article 18

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

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

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

Article 19

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

Article 20

(1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. [paragraph (2) is omitted]

Article 21

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

Article 22

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the Court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital sum of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (a) In the carriage of registered baggage and cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case, the carrier shall be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or cargo, or any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is
limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air way-bill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

(4) The limits prescribed in this Article shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the Plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the Plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

**Article 23**

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

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

**Article 24**

(1) In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

(2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

**Article 25**

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

**Article 25A**

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

(1) Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.

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

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

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

Article 27

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

Article 28

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

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

Article 29

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

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

Article 30

(1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the Contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards luggage or goods, 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 shall be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV — PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

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

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

CHAPTER V — GENERAL AND FINAL PROVISIONS

Article 32

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

Article 33

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

Article 34

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

Article 35

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

Article 36

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

Article 37

(1) This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

(2) As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have rati-
fied and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.

(3) It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

(1) This Convention shall, after it has come into force, remain open for accession by any State.

(2) The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.

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

Article 39

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

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

Article 40

(1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.

(2) Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or to his authority, or any territory under his suzerainty, which have been thus excluded by his original declaration.

(3) Any High Contracting Party may denounce this Convention in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate, or any other territory under his suzerainty.

Article 40A

(1) In Article 37, paragraph (2) and Article 40, paragraph (1), the expression High Contracting Party shall mean State. In all other cases, the expression High Contracting Party shall mean a State whose ratification or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

(2) For the purposes of the Convention the word territory, means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.
ADDITIONAL PROTOCOL
(With reference to Article 2)

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

ADDITIONAL PROVISIONS COMPRISED IN THE HAGUE PROTOCOL OF 28TH SEPTEMBER, 1955

CHAPTER II
Scope of application of the Convention as amended

Article XVIII

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

CHAPTER III
Final Clauses

Article XIX

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

Article XX

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

Article XXI

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

Article XXII

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

(1) This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.

(2) Adherence to this Protocol by any State which is not a party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.

(3) Adherence shall be effected by the deposit of an instrument of adherence with the Government of the Peoples' Republic of Poland and shall take effect on the ninetieth day after the deposit.

Article XXIV

(1) Any party to this Protocol may denounce the Protocol by notification addressed to the Government of the Peoples' Republic of Poland.

(2) Denunciation shall take effect six months after the date of receipt by the Government of the Peoples' Republic of Poland of the notification of denunciation.

(3) As between the parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

(1) This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article.

(2) Any State may, at the time of deposit of its instrument of ratification of adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.

(3) Any State may subsequently, by notification to the Government of the Peoples' Republic of Poland, extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.

(4) Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph (1), separately for any or all of the territories for the foreign relations of which such State is responsible.

Article XXVI

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

Article XXVII

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

(a) of any signature of this Protocol and the date thereof;

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

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

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

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