



Carriage by Air and Road Act 1979

CHAPTER 28

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ELIZABETH II



Carriage by Air and Road Act 1979

1979 CHAPTER 28

An Act to enable effect to be given to provisions of certain protocols signed at Montreal on 25th September 1975 which further amend the convention relating to carriage by air known as the Warsaw Convention as amended at The Hague 1955; to modify article 26(2) of the said convention both as in force apart from those protocols and as in force by virtue of them; to provide for the amendment of certain Acts relating to carriage by air or road in consequence of the revision of relevant conventions; and to replace references to gold francs in the Carriage of Goods by Road Act 1965 and the Carriage of Passengers by Road Act 1974 by references to special drawing rights. [4th April 1979]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) For Schedule 1 to the Carriage by Air Act 1961 (which contains the English and French texts of the Warsaw Convention mentioned in the title to this Act as it has the force of law in the United Kingdom by virtue of section 1 of that Act) there shall be substituted Schedule 1 to this Act (which contains the English and French texts of that Convention as amended by provisions of protocols No. 3 and No. 4 which were signed at Montreal on 25th September 1975). Alterations of texts of carriage by air convention. 1961 c. 27.

(2) The said Act of 1961 and the Carriage by Air (Supplementary Provisions) Act 1962 shall have effect with the amendments set out in Schedule 2 to this Act (which are consequential 1962 c. 43.

upon the changes of texts made by the preceding subsection or are connected with the coming into force of those texts).

(3) Neither of the preceding subsections shall affect rights and liabilities arising out of an occurrence which took place before the coming into force of that subsection or, if the subsection comes into force in pursuance of section 7(2) of this Act for some purposes only, arising out of an occurrence which took place before it comes into force for those purposes.

Modification of article 26(2) of carriage by air convention. 1961 c. 27.

2.—(1) In the Carriage by Air Act 1961, after section 4 there shall be inserted the following section—

Notice of partial loss.

4A.—(1) In Article 26(2) the references to damage shall be construed as including loss of part of the baggage or cargo in question and the reference to the receipt of baggage or cargo shall, in relation to loss of part of it, be construed as receipt of the remainder of it.

(2) It is hereby declared, without prejudice to the operation of any other section of this Act, that the reference to Article 26(2) in the preceding subsection is to Article 26(2) as set out in Part I and Part II of the First Schedule to this Act.

(2) This section shall come into force at the passing of this Act but shall not apply to loss which occurred before the passing of this Act.

Amendment of Acts relating to carriage by air or road in consequence of revision of relevant conventions.

3.—(1) In the Carriage by Air Act 1961, after section 8 there shall be inserted the following section—

Amendments consequential on revision of Convention.

8A.—(1) If at any time it appears to Her Majesty in Council that Her Majesty's Government in the United Kingdom have agreed to a revision of the Convention, Her Majesty may by Order in Council provide that this Act, the Carriage by Air (Supplementary Provisions) Act 1962 and section 5(1) of the Carriage by Air and Road Act 1979 shall have effect subject to such exceptions, adaptations and modifications as Her Majesty considers appropriate in consequence of the revision.

(2) In the preceding subsection "revision" means an omission from, addition to or alteration of the Convention and includes replacement of the Convention or part of it by another convention.

(3) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(2) In the Carriage by Air (Supplementary Provisions) Act 1962 c. 43. 1962, after section 4 there shall be inserted the following section—

Amend-
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revision of
Supple-
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Convention.

4A.—(1) Section 8A of the said Act of 1961 (which among other things enables Her Majesty in Council to alter that Act and this Act in consequence of any revision of the convention to which that Act relates) shall have effect in relation to a revision of the Convention in the Schedule to this Act as it has effect in relation to a revision of the Convention mentioned in that section but as if the reference in that section to the said Act of 1961 were omitted.

(2) An order under the said section 8A may relate both to that Act and this Act; and in the preceding subsection “revision”, in relation to the Convention in the Schedule to this Act, means an omission from, addition to or alteration of that Convention and includes replacement of that Convention or part of it by another convention.

(3) In the Carriage of Goods by Road Act 1965, after 1965 c. 37. section 8 there shall be inserted the following section—

Amend-
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revision of
Convention.

8A.—(1) If at any time it appears to Her Majesty in Council that Her Majesty’s Government in the United Kingdom have agreed to any revision of the Convention, Her Majesty may by Order in Council make such amendment of—

- (a) the provisions set out in the Schedule to this Act; and
- (b) the definition of, and references in this Act to, or to particular provisions of, the Convention; and
- (c) section 5(1) of the Carriage by Air and Road Act 1979,

as appear to Her to be appropriate in consequence of the revision.

(2) In the preceding subsection “revision” means an omission from, addition to or alteration of the Convention and includes replacement of the Convention or part of it by another convention.

(3) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(4) In section 8 of the Carriage of Passengers by Road Act 1974 c. 35. 1974 (of which subsection (1) enables amendments of the

provisions of that Act mentioned in paragraphs (a) and (b) of that subsection to be made by Order in Council in consequence of any revision of the Convention mentioned in that subsection, whether the revision operates by way of amendment of the text of the Convention as then in force or takes the form of a new convention or part of a new convention having substantially the same effect as the provisions set out in the Schedule to that Act)—

- (a) in subsection (1) the words from “whether” to “Act” where it first occurs shall be omitted;
- (b) at the end of paragraph (b) of subsection (1) there shall be inserted the words “and
 - (c) of section 5(1) of the Carriage by Air and Road Act 1979”; and
- (c) after subsection (1) there shall be inserted the following subsection—
 - (1A) In the preceding subsection “revision” means an omission from, addition to or alteration of the Convention and includes replacement of the Convention or part of it by another convention.

Replacement of gold francs by special drawing rights for the purposes of certain enactments relating to carriage by air or road. 1961 c. 27.

4.—(1) Schedule 1 to the Carriage by Air Act 1961 as originally enacted shall have effect with the following amendments, namely—

- (a) in Article 22 of Part I of that Schedule (which among other things provides that the liability of a carrier is limited to two hundred and fifty thousand francs for each passenger and two hundred and fifty francs per kilogramme of cargo and registered baggage unless a higher limit is agreed and to five thousand francs for objects of which a passenger takes charge himself)—
 - (i) for the words “two hundred and fifty thousand francs” where they first occur and the words “two hundred and fifty francs” and “five thousand francs” there shall be substituted respectively the words “16,600 special drawing rights”, “17 special drawing rights” and “332 special drawing rights”,
 - (ii) for the words “two hundred and fifty thousand francs” in the second place where they occur there shall be substituted the words “this limit”, and
 - (iii) for paragraph (5) there shall be substituted the following paragraph—

(5) The sums mentioned in terms of the special drawing right in this Article shall be deemed to refer to the special drawing

right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the special drawing right at the date of the judgment. ;

(b) in Article 22 of Part II of that Schedule (which contains the corresponding provisions of the French text)—

(i) for the words “deux cent cinquante mille francs”, “deux cent cinquante francs” and “cinq mille francs” there shall be substituted respectively the words “16.600 Droits de Tirage spéciaux”, “17 Droits de Tirage spéciaux” and “332 Droits de Tirage spéciaux”, and

(ii) for paragraph (5) there shall be substituted the following paragraph—

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

but nothing in this subsection affects the provisions of Schedule 1 to this Act.

(2) The Schedule to the Carriage of Goods by Road Act 1965 1965 c. 37 (which contains the text of the Convention on the Contract for the International Carriage of Goods by Road as it has the force of law in the United Kingdom by virtue of section 1 of that Act) shall have effect with the following amendments, namely—

(a) for paragraph 3 of Article 23 (which provides that compensation for loss of goods shall not exceed 25 francs per kilogram of gross weight short) there shall be substituted the following paragraph—

3. Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short. ;

(b) at the end of Article 23 there shall be inserted the following paragraph—

7. The unit of account mentioned in this Convention is the Special Drawing Right as defined by

the International Monetary Fund. The amount mentioned in paragraph 3 of this article shall be converted into the national currency of the State of the Court seised of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties. .

1974 c. 35.

(3) The Schedule to the Carriage of Passengers by Road Act 1974 (which contains the text of the Convention on the Contract for the International Carriage of Passengers and Luggage by Road as it has the force of law in the United Kingdom by virtue of section 1 of that Act) shall have effect with the following amendments, namely—

- (a) in paragraph 1 of Article 13 (which among other things provides that the total damages payable by a carrier in respect of the same occurrence shall not exceed 250,000 francs for each victim) for the words “ 250,000 francs ” there shall be substituted the words “ 83,333 units of account ” ;
- (b) in paragraph 1 of Article 16 (which among other things provides that compensation in respect of luggage shall not exceed 500 francs for each piece of luggage nor 2,000 francs for each passenger and that compensation in respect of personal effects shall not exceed 1,000 francs for each passenger) for the words “ 500 francs ”, “ 2,000 francs ” and “ 1,000 francs ” respectively there shall be substituted the words “ 166.67 units of account ”, “ 666.67 units of account ” and “ 333.33 units of account ” ;
- (c) for Article 19 (which provides that the franc referred to in the Convention shall be the gold franc specified in that Article) there shall be substituted the following Article—

Article 19

The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in articles 13 and 16 of this Convention shall be converted into the national currency of the State of the Court seised of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties. .

(4) If judgment in respect of a liability limited by the said Article 22, 23, 13 or 16 is given—

- (a) in the case of a liability limited by the said Article 22, at a time when the amendments made by this section

to that Article are in force for the purposes of the liability ; or

- (b) in any other case, at a time when the amendments made by this section to the other Article in question are in force,

then, notwithstanding that the liability arose before the amendments in question came into force, the judgment shall be in accordance with that Article as amended by this section and, in a case falling within the said Article 13 or 16, in accordance with the said Article 19 as so amended.

5.—(1) For the purposes of Articles 22 and 22A of Schedule 1 to this Act and the Articles 22, 23 and 19 mentioned in the preceding section as amended by that section, the value on a particular day of one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right—

Conversion of special drawing rights into sterling.

- (a) for that day ; or

- (b) if no sum has been so fixed for that day, for the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury stating—

- (a) that a particular sum in sterling has been fixed as aforesaid for a particular day ; or

- (b) that no sum has been so fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purposes of the preceding subsection ; and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(3) The Treasury may charge a reasonable fee for any certificate given by or on behalf of the Treasury in pursuance of the preceding subsection, and any fee received by the Treasury by virtue of this subsection shall be paid into the Consolidated Fund.

6.—(1) It is hereby declared that the powers to make Orders Supplemental in Council conferred by—

- (a) sections 8A, 9 and 10 of the Carriage by Air Act 1961 (1961 c. 27.) (which provide for the amendment of that Act and other Acts in consequence of a revision of the relevant convention and for the application of that Act to the countries mentioned in section 9 and to such carriage by air as is mentioned in section 10) ; and

- 1965 c. 37. (b) sections 8, 8A and 9 of the Carriage of Goods by Road Act 1965 (which provide for the resolution of conflicts between provisions of that Act and certain other provisions relating to carriage by road, for the amendment of that Act in consequence of a revision of the relevant convention and for the application of that Act to the countries mentioned in section 9); and
- 1974 c. 35. (c) sections 7, 8 and 9 of the Carriage of Passengers by Road Act 1974 (which provide as mentioned in the preceding paragraph),

include power to make Orders in Council in respect of the Act in question as amended by this Act.

- (2) It is hereby declared that Schedule 1 to the said Act of 1961 as originally enacted or, if subsection (1) of section 4 of this Act has come into force, as amended by that subsection, remains in force in relation to any matter in relation to which Schedule 1 to this Act is not for the time being in force and that the reference to Schedule 1 to that Act in section 2(1)(b) of the Carriage by Air (Supplementary Provisions) Act 1962 is to be construed as a reference to both the Schedules 1 aforesaid so far as each is for the time being in force.
- 1962 c. 43.

(3) This Act binds the Crown.

(4) The following provisions (which are superseded by this Act) are hereby repealed, namely—

- (a) section 4(4) of the said Act of 1961 ;
- (b) in section 8(1) of the said Act of 1974 the words from “whether” to “Act” where it first occurs.

Short title
and
commence-
ment.

7.—(1) This Act may be cited as the Carriage by Air and Road Act 1979.

(2) This Act, except section 2, shall come into force on such day as Her Majesty may by Order in Council appoint, and—

- (a) different days may be appointed in pursuance of this subsection for different provisions of this Act or for different purposes of the same provision ;
- (b) it is hereby declared that a day or days may be appointed in pursuance of this subsection in respect of subsection (1) of section 1 of this Act and Schedule 1 to this Act notwithstanding that the protocols mentioned in that subsection are not in force in accordance with the provisions in that behalf of those protocols.

SCHEDULES

SCHEDULE 1

Sections 1(1),
4(1), 5(1), 6(2),
7(2).

THE WARSAW CONVENTION AS AMENDED AT THE HAGUE IN 1955 AND
BY PROTOCOLS NO. 3 AND NO. 4 SIGNED AT MONTREAL IN 1975

PART I

THE ENGLISH TEXT

CHAPTER I

SCOPE—DEFINITIONS

Article 1

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

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

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

Article 2

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

(2) 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.

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CHAPTER II

DOCUMENTS OF CARRIAGE

SECTION 1—PASSENGER TICKET

Article 3

(1) In respect of the 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 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.

(2) Any other means which would preserve a record of the information indicated in (a) and (b) of the foregoing paragraph may be substituted for the delivery of the document referred to in that paragraph.

(3) Non-compliance with the provisions of the foregoing paragraphs 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.

SECTION 2—BAGGAGE CHECK

Article 4

(1) In respect of the carriage of checked baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a document of carriage 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.

(2) Any other means which would preserve a record of the information indicated in (a) and (b) of the foregoing paragraph may be substituted for the delivery of the baggage check referred to in that paragraph.

(3) Non-compliance with the provisions of the foregoing paragraphs 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.

SECTION 3—DOCUMENTATION RELATING TO CARGO

Article 5

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

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

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

Article 6

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

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

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

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

Article 7

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 receipts when the other means referred to in paragraph (2) of Article 5 are used.

Article 8

The air waybill and the receipt for the cargo shall contain :

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

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Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10

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

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

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

Article 11

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

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

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such

a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right. Sch. 1

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

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

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

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

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

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

Article 14

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

Article 15

(1) Articles 12, 13 and 14 do not affect 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 receipt for the cargo.

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Article 16

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

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

Article 17

(1) The carrier is liable for damage sustained in case of death or personal injury of a passenger upon condition only that the event 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 the death or injury resulted solely 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, 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 charge of the carrier. However, the carrier is not liable if the damage resulted solely from the inherent defect, quality or vice of the baggage.

(3) Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and objects carried by the passenger.

Article 18

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

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

- (a) inherent defect, quality or vice of that cargo ;
- (b) defective packing of that cargo performed by a person other than the carrier or his servants or agents ;
- (c) an act of war or an armed conflict ;
- (d) an act of 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, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

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

Article 19

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

Article 20

In the carriage of passengers, baggage and cargo, the carrier shall not be liable for damage occasioned by delay if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

Article 21

(1) In the carriage of passengers and baggage, if the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, the carrier shall be wholly or partly exonerated from his liability to such person 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 liability to the extent that he proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.

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

Article 22

(1)(a) In the carriage of persons the liability of the carrier is limited to the sum of 100,000 special drawing rights for the aggregate of the claims, however founded, in respect of damage suffered

SCH. 1

as a result of the death or personal injury of each passenger. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed 100,000 special drawing rights.

(b) In the case of delay in the carriage of persons the liability of the carrier for each passenger is limited to 4,150 special drawing rights.

(c) 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.

(2)(a) The courts of the High Contracting Parties which are not authorised under their law to award the costs of the action, including lawyers' fees, shall, in actions relating to the carriage of passengers and baggage to which this Convention applies, have the power to award, in their discretion, to the claimant the whole or part of the costs of the action, including lawyers' fees which the court considers reasonable.

(b) The costs of the action including lawyers' fees shall be awarded in accordance with subparagraph (a) only if the claimant gives a written notice to the carrier of the amount claimed including the particulars of the calculation of that amount and the carrier does not make, within a period of six months after his receipt of such notice, a written offer of settlement in an amount at least equal to the compensation awarded within the applicable limit. This period will be extended until the time of commencement of the action if that is later.

(c) The costs of the action including lawyers' fees shall not be taken into account in applying the limits under this Article.

(3) The sums mentioned in terms of special drawing right in this Article shall be deemed to refer to the special drawing right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the special drawing right at the date of the judgment.

Article 22A

(1)(a) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 special drawing rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.

(b) 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, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

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(2) The limits prescribed in this Article shall not prevent the court in an action relating to the carriage of cargo 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.

(3) The sums mentioned in terms of special drawing right in this Article shall be deemed to refer to the special drawing right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the special drawing right at the date of 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

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 limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.

Article 25A

(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 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 this Convention.

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

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Article 26

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

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

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

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

Article 27

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

Article 28

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

(2) In respect of damage resulting from the death, injury or delay of a passenger or the destruction, loss, damage or delay of baggage, the action may be brought before one of the courts mentioned in paragraph (1) of this Article, or in the territory of one of the High Contracting Parties, before the court within the jurisdiction of which the carrier has an establishment if the passenger has his ordinary or permanent residence in the territory of the same High Contracting Party.

(3) 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

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

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

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 30A

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

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

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

SCH. 1 deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Except as provided in paragraph (3) of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

Article 34

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

Article 35

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

Article 35A

No provision contained in this Convention shall prevent a State from establishing and operating within its territory a system to supplement the compensation payable to claimants under the Convention in respect of death, or personal injury, of passengers. Such a system shall fulfil the following conditions:

- (a) it shall not in any circumstances impose upon the carrier, his servants or agents, any liability in addition to that provided under this Convention ;
- (b) it shall not impose upon the carrier any financial or administrative burden other than collecting in that State contributions from passengers if required so to do ;
- (c) it shall not give rise to any discrimination between carriers with regard to the passengers concerned and the benefits available to the said passengers under the system shall be extended to them regardless of the carrier whose services they have used ;
- (d) if a passenger has contributed to the system, any person suffering damage as a consequence of death or personal injury of such passenger shall be entitled to the benefits of the system.

Article 40A

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

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

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[Articles 36, 37, 38, 39, 40, 41 and 42 and the concluding words of the Convention are not reproduced. They deal, among other things, with the coming into force of the Convention. The former Article 25 is superseded by Article 24.]

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.

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PART II

THE FRENCH TEXT

CHAPITRE IER

OBJET—DÉFINITIONS

Article 1er

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

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

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

Article 2

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

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

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

CHAPITRE II

SCH. 1

TITRES DE TRANSPORT

SECTION 1—BILLET DE PASSAGE

Article 3

(1) Dans le transport de 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'une même Haute Partie Contractante et si une ou plusieurs escales sont prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales.

(2) L'emploi de tout autre moyen constatant les indications qui figurent à l'alinéa (1) (a) et (b), peut se substituer à la délivrance du titre de transport mentionné audit alinéa.

(3) L'inobservation des dispositions de l'alinéa précédent 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.

SECTION 2—BULLETIN DE BAGAGES

Article 4

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

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

(2) L'emploi de tout autre moyen constatant les indications qui figurent à l'alinéa (1)(a) et (b), peut se substituer à la délivrance du bulletin de bagages mentionné audit alinéa.

(3) L'inobservation des dispositions de l'alinéa précédent 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.

SECTION 3—DOCUMENTATION RELATIVE AUX MARCHANDISES

Article 5

(1) Pour le transport de marchandises une lettre de transport aérien est émise.

(2) L'emploi de tout autre moyen constatant les indications relatives au transport à exécuter peut, avec le consentement de l'expéditeur, se

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substituer à l'émission de la lettre de transport aérien. Si de tels autres moyens sont utilisés, le transporteur délivre à l'expéditeur, à la demande de ce dernier, un récépissé de la marchandise permettant l'identification de l'expédition et l'accès aux indications enregistrées par ces autres moyens.

(3) L'impossibilité d'utiliser, aux points de transit et de destination, les autres moyens permettant de constater les indications relatives au transport, visés à l'alinéa (2) ci-dessus, n'autorise pas le transporteur à refuser l'acceptation des marchandises en vue du transport.

Article 6

(1) La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux.

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

(3) La signature du transporteur et celle de l'expéditeur peuvent être imprimées ou remplacées par un timbre.

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

Article 7

Lorsqu'il y a plusieurs colis :

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

Article 8

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

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

Article 9

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L'inobservation des dispositions des articles 5 à 8 n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention, y compris celles qui portent sur la limitation de responsabilité.

Article 10

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

(2) L'expéditeur assume la responsabilité de tout dommage subi par le transporteur ou par toute autre personne à l'égard de laquelle la responsabilité du transporteur est engagée, à raison des indications et déclarations irrégulières, inexactes ou incomplètes fournies et faites par lui ou en son nom.

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

Article 11

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

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

Article 12

(1) L'expéditeur a le droit, sous la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant à l'aérodrome de départ ou de destination, soit en l'arrêtant en cours de route lors d'un atterrissage, soit en la faisant délivrer au lieu de destination ou en cours de route à une personne autre que le destinataire initialement désigné, soit en

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demandant son retour à l'aérodrome de départ, pour autant que l'exercice de ce droit ne porte préjudice ni au transporteur, ni aux autres expéditeurs et avec l'obligation de rembourser les frais qui en résultent.

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

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

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

Article 13

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

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

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

Article 14

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

Article 15

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

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

Article 16

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

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

CHAPITRE III

RESPONSABILITÉ DU TRANSPORTEUR

Article 17

(1) Le transporteur est responsable du préjudice survenu en cas de mort ou de toute lésion corporelle subie par un passager, par cela seul que le fait qui a causé la mort ou la lésion corporelle s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement ou de débarquement. Toutefois, le transporteur n'est pas responsable si la mort ou la lésion corporelle résulte uniquement de l'état de santé du passager.

(2) Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages, par cela seul que le fait qui a causé la destruction, la perte ou l'avarie s'est produit à bord de l'aéronef, au cours de toutes opérations d'embarquement ou de débarquement ou au cours de toute période durant laquelle le transporteur avait la garde des bagages. Toutefois, le transporteur n'est pas responsable si le dommage résulte uniquement de la nature ou du vice propre des bagages.

(3) Sous réserve de dispositions contraires, dans cette Convention le terme " bagages " désigne les bagages enregistrés aussi bien que les objets qu'emporte le passager.

Article 18

(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 que la destruction, la perte ou l'avarie de la marchandise résulte uniquement de l'un ou de plusieurs des faits suivants :

- (a) la nature ou le vice propre de la marchandise ;
- (b) l'emballage défectueux de la marchandise par une personne autre que le transporteur ou ses préposés ;
- (c) un fait de guerre ou un conflit armé ;

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(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 de l'alinéa (1) du présent article, comprend la période pendant laquelle les bagages ou marchandises se trouvent sous la garde du transporteur, que ce soit dans un aéroport ou à bord d'un aéronef ou dans un lieu quelconque en cas d'atterrissage en dehors d'un aéroport.

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

Article 19

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

Article 20

Dans le transport de passagers, de bagages et de marchandises, le transporteur n'est pas responsable du dommage résultant d'un retard s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

Article 21

(1) Dans le cas où il fait la preuve que la faute de la personne qui demande réparation 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 faute 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 corporelle 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 faute de ce passager a causé le dommage ou y a contribué.

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

Article 22

(1) (a) Dans le transport de personnes, la responsabilité du transporteur est limitée à la somme de 100.000 Droits de Tirage spéciaux pour l'ensemble des demandes présentées, à quelque titre que ce soit, en réparation du dommage subi en conséquence de la mort ou de lésions corporelles d'un passager. Dans le cas où, d'après la loi du

tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser 100.000 Droits de Tirage spéciaux.

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(b) En cas de retard dans le transport de personnes, la responsabilité du transporteur est limitée à la somme de 4.150 Droits de Tirage spéciaux par passager.

(c) 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.

(2) (a) Les tribunaux des Hautes Parties Contractantes qui n'ont pas la faculté, en vertu de leur propre loi, d'allouer des frais de procès y compris des honoraires d'avocat auront, dans les instances auxquelles la présente Convention s'applique, le pouvoir d'allouer au demandeur, suivant leur appréciation, tout ou partie des frais de procès, y compris les honoraires d'avocat qu'ils jugent raisonnables.

(b) Les frais de procès y compris des honoraires d'avocat ne sont accordés, en vertu de l'alinéa (a), que si le demandeur a notifié par écrit au transporteur le montant de la somme réclamée, y compris les détails de calcul de cette somme, et si le transporteur n'a pas, dans un délai de six mois à compter de la réception de cette demande, fait par écrit une offre de règlement d'un montant au moins égal à celui des dommages-intérêts alloués par le tribunal à concurrence de la limite applicable. Ce délai est prorogé jusqu'au jour de l'introduction de l'instance si celle-ci est postérieure à l'expiration de ce délai.

(c) Les frais de procès y compris des honoraires d'avocat ne sont pas pris en considération pour l'application des limites prévues au présent article.

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

Article 22A

(1) (a) Dans le transport de marchandises, la responsabilité du transporteur est limitée à la somme de 17 Droits de Tirage spéciaux par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

(b) En cas 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 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, le poids total de ces colis doit être pris en considération pour déterminer la limite de responsabilité.

SCH. 1

(2) Les limites fixées par le présent article n'ont pas pour effet d'enlever au tribunal la faculté d'allouer en outre, conformément à sa loi, une somme correspondante à tout ou partie des dépens et autres frais du procès exposés par le demandeur. La disposition précédente ne s'applique pas lorsque le montant de l'indemnité allouée, non compris les dépens et autres frais de procès, ne dépasse pas la somme que le transporteur a offerte par écrit au demandeur dans un délai de six mois à dater du fait qui a causé le dommage ou avant l'introduction de l'instance si celle-ci est postérieure à ce délai.

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

Article 23

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

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

Article 24

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

Article 25A

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

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

Article 26

SCR. 1

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

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

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

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

Article 27

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

Article 28

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

(2) En ce qui concerne le dommage résultant de la mort, d'une lésion corporelle ou du retard subi par un passager ainsi que de la destruction, perte, avarie ou retard des bagages, l'action en responsabilité peut être intentée devant l'un des tribunaux mentionnés à l'alinéa 1er du présent article ou, sur le territoire d'une Haute Partie Contractante, devant le tribunal dans le ressort duquel le transporteur possède un établissement, si le passager a son domicile ou sa résidence permanente sur le territoire de la même Haute Partie Contractante.

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

Article 29

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

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

SCH. 1

Article 30

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

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

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

Article 30A

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

CHAPITRE IV

DISPOSITIONS RELATIVES AUX TRANSPORTS COMBINÉS

Article 31

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

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

CHAPITRE V

DISPOSITIONS GÉNÉRALES ET FINALES

Article 32

Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une

détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans le lieu de compétence des tribunaux prévus à l'article 28, alinéa (1).

SCH. 1

Article 33

Sous réserve des dispositions de l'alinéa (3) de l'article 5, rien dans la présente Convention ne peut empêcher un transporteur de refuser la conclusion d'un contrat de transport ou de formuler des règlements qui ne sont pas en contradiction avec les dispositions de la présente Convention.

Article 34

Les dispositions des articles 3 à 8 inclus relatives aux titres de transport ne sont pas applicables au transport effectué dans des circonstances extraordinaires en dehors de toute opération normale de l'exploitation aérienne.

Article 35

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

Article 35A

Rien dans la présente Convention ne prohibe l'institution par un Etat et l'application sur son territoire d'un système d'indemnisation complémentaire à celui prévu par la présente Convention en faveur des demandeurs dans le cas de mort ou de lésions corporelles d'un passager. Un tel système doit satisfaire aux conditions suivantes :

- (a) en aucun cas il ne doit imposer au transporteur et à ses préposés une responsabilité quelconque s'ajoutant à celle stipulée par la Convention ;
- (b) il ne doit imposer au transporteur aucune charge financière ou administrative autre que la perception dans ledit Etat des contributions des passagers, s'il en est requis ;
- (c) il ne doit donner lieu à aucune discrimination entre les transporteurs en ce qui concerne les passagers intéressés et les avantages que ces derniers peuvent retirer du système doivent leur être accordés quel que soit le transporteur dont ils ont utilisé les services ;
- (d) lorsqu'un passager a contribué au système, toute personne ayant subi des dommages à la suite de la mort ou de lésions corporelles de ce passager pourra prétendre à bénéficier des avantages du système.

Article 40A

(1)

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

SCH. 1

PROTOCOLE ADDITIONNEL

Ad Article 2

Les Hautes Parties Contractantes se réservent le droit de déclarer au moment de la ratification ou de l'adhésion que l'article 2, alinéa 1er, de la présente Convention ne s'appliquera pas aux transports internationaux aériens effectués directement par l'Etat, ses colonies, protectorats, territoires sous mandat ou tout autre territoire sous sa souveraineté, sa suzeraineté ou son autorité.

Section 1(2).

SCHEDULE 2

CONSEQUENTIAL ETC AMENDMENTS OF CARRIAGE BY AIR ACT 1961
AND CARRIAGE BY AIR (SUPPLEMENTARY PROVISIONS) ACT 1962

1961 c. 27.

1. In section 1(1) of the Carriage by Air Act 1961 (which provides for the Warsaw Convention as amended at The Hague 1955 to have the force of law in the United Kingdom) after the words "1955, as" there shall be inserted the words "further amended by provisions of protocols No. 3 and No. 4 signed at Montreal on 25th September 1975 and".

2. In section 2(1) of that Act (which provides for Orders in Council to certify who are the High Contracting Parties to the Convention) after the words "who are" there shall be inserted the words ", either generally or in respect of specified matters,".

3. In section 3 of that Act and in that section as set out in section 11(b) of that Act (which refer to liability under Article 17 of the Convention) for the words "Article 17" there shall be substituted the words "Article 17(1)".

4. In section 4 of that Act (which relates to the limitations on liability in Article 22 of the Convention)—

- (a) after the words "Article 22" in subsections (1) and (5), except subsection (1)(b), there shall be inserted the words "and Article 22A" and after the words "Article 22" in subsections (2) and (3) there shall be inserted the words "or Article 22A";
- (b) in subsection (1)(b) (which refers to paragraph (1) of Article 22) for the words "paragraph (1)" there shall be substituted the words "paragraph (1)(a)"; and
- (c) subsection (4) (which relates to amounts which are to be taken as equivalent to sums expressed in francs) shall be omitted.

1962 c. 43.

5. In section 4 of the Carriage by Air (Supplementary Provisions) Act 1962 (which refers to the date of the coming into force of Article 25A of Schedule 1 to the said Act of 1961) after the words "1961" there shall be inserted the words "as originally enacted".

6. In paragraph 2 of Article III in Part I of the Schedule to the said Act of 1962 (which refers to the limits and the destination mentioned in Article 22 of the Convention), after the words " Article 22 " in both places there shall be inserted the words " or Article 22A " ; and in paragraph 2 of Article III in Part II of that Schedule (which contains the corresponding French text) after the words " l'article 22 " in both places there shall be inserted the words " ou à l'article 22A " .

SCH. 2

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