

Chapter 292.
Civil Aviation (Aircraft Operators' Liability) Act 1975.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 292.

Civil Aviation (Aircraft Operators' Liability) Act 1975.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Civil Aviation (Aircraft Operators' Liability) Act 1975,

Being an Act to give the force of law to the provisions of—

- (a) the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air; and
- (b) the Hague Protocol to Amend the Warsaw Convention; and
- (c) the Guadalajara Convention, Supplementary to the Warsaw Convention, for Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier; and
- (d) the Rome Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface,

and to extend the effect of those provisions in certain circumstances.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**the Guadalajara Convention**” means the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier opened for signature at Guadalajara on 18 September 1961;

“**the Hague Protocol**” means the Protocol to Amend the Warsaw Convention opened for signature at The Hague on 28 September 1955;

“**the Rome Convention**” means the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface opened for signature at

Rome on 7 October 1952, being the Convention a copy of the authentic text of which in the English language is set out in Schedule 1;

“the Warsaw Convention” means the Convention for the Unification of Certain Rules Relating to International Carriage by Air opened for signature at Warsaw on 12 October 1929, and includes the Additional Protocol to that Convention with reference to Article 2 of that Convention.

2. ACT TO BIND THE STATE.

This Act binds the State.

3. TEXTS OF CONVENTIONS OTHER THAN THE ROME CONVENTION.

(1) Subject to this section, for the purpose of this Act the text of the Warsaw Convention shall be deemed to be the text set out in Schedule 2, being a translation into the English language of the authentic text in the French language of that Convention.

(2) Subject to this section, for the purposes of this Act the text of the Hague Protocol shall be deemed to be the text set out in Schedule 3, being a copy of the authentic text in the English language of that Protocol.

(3) Subject to this section, for the purposes of this Act the text of the Guadalajara Convention shall be deemed to be the text set out in Schedule 4, being a copy of the authentic text in the English language of that Convention.

(4) If any inconsistency is shown between the text set out in Schedule 2, Schedule 3 or Schedule 4 and the authentic text in the French language of the Warsaw Convention, the Hague Protocol or the Guadalajara Convention, as the case may be, the authentic French text prevails.

(5) A certificate in writing under the hand of the Minister that a document to which the certificate is annexed is a true copy of the authentic text in the French language of the Warsaw Convention, the Hague Protocol or the Guadalajara Convention is evidence that the document is a true copy.

**PART II. – THE WARSAW CONVENTION, THE HAGUE PROTOCOL AND
THE GUADALAJARA CONVENTION.**

Division 1.

Carriage to which the Warsaw Convention and the Hague Protocol Apply.

4. INTERPRETATION OF DIVISION 1.

In this Division, “**the Convention**” means the Warsaw Convention and the Hague Protocol read and interpreted together as a single instrument in accordance with Article XIX of the Hague Protocol.

5. CONVENTION TO HAVE FORCE OF LAW.

(1) Subject to this Division, the provisions of the Convention have the force of law in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing the carriage.

(2) Unless the contrary intention appears, a reference in this Division to the Convention shall be read as a reference to the provisions of the Convention as having the force of law by virtue of this section.

6. LIABILITY IN RESPECT OF DEATH.

(1) This section applies in relation to liability imposed by the Convention on a carrier in respect of the death of a passenger (including the injury that resulted in the death).

(2) Subject to Section 8, the liability under the Convention is in substitution for any civil liability of the carrier under any other law in respect of—

- (a) the death of the passenger; or
- (b) the injury that has resulted in the death of the passenger.

(3) Subject to Subsection (4), the liability is enforceable for the benefit of such of the members of the passenger’s family as sustained damage by reason of his death and for the purposes of this subsection—

- (a) the passenger’s family shall be deemed to consist of the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger; and
- (b) in ascertaining the members of the passenger’s family, an illegitimate person or an adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(4) To the extent that the damages recoverable include—

- (a) loss of earnings or profits up to the date of death; or

- (b) funeral, medical or hospital expenses paid or incurred by the passenger before his death or by his personal representative,

the liability is enforceable for the benefit of the personal representative of the passenger in his capacity as personal representative.

- (5) The action to enforce the liability may be brought by—

- (a) the personal representative of the passenger; or
- (b) a person for whose benefit the liability is, under the preceding provisions of this section enforceable,

but only one action shall be brought in the country in respect of the death of any one passenger, and the action is for the benefit of all persons for whose benefit the liability is so enforceable who—

- (c) are resident in the country; or
- (d) not being resident in the country, express the desire to take the benefit of the action.

- (6) The damages recoverable in the action include—

- (a) loss of earnings or profits up to the date of death; and
- (b) the reasonable expenses of the funeral of the passenger; and
- (c) medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.

(7) In awarding damages, the court is not limited to the financial loss resulting from the death of the passenger.

(8) Subject to Subsection (9), the amount recovered in the action shall, after the deduction of any costs not recovered from the defendant, be divided amongst the persons entitled in such proportions as the court directs.

(9) At any stage of the proceedings the court may make any such order as appears to it to be just and equitable in view of—

- (a) the provisions of the Convention limiting the liability of the carrier; and
- (b) any proceedings that have been, or are likely to be, commenced against the carrier, whether in or outside the country.

(10) The second sentence of Paragraph 4 of Article 22 of the Warsaw Convention, as amended by the Hague Protocol, does not apply to an action to which this section applies that is wholly or partly for the benefit of a person or persons other than the plaintiff, but in such an action the court may deal with any question of costs in such manner as it thinks proper having regard to the operation of that sentence in cases to which it applies.

7. LIABILITY IN RESPECT OF INJURY.

Subject to Section 8, the liability of a carrier under the Convention in respect of personal injury suffered by a passenger, not being injury that has resulted in the

death of the passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

8. CERTAIN LIABILITIES NOT EXCLUDED.

Neither the Convention nor this Division excludes any liability of a carrier—

- (a) to indemnify an employer of a passenger or any other person in respect of any liability of, or payments made by, the employer or other person under a law providing for compensation, however described, in the nature of workers' compensation; or
- (b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger,

but this section does not operate to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with the Convention.

9. PROCEEDS OF INSURANCE POLICIES, ETC.

In assessing damages in respect of liability under the Convention, there shall not be taken into account by way of reduction of the damages—

- (a) any sum paid or payable under a contract of insurance, on the death of, or on personal injury to, a passenger; or
- (b) any sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union; or
- (c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent on the death or injury, by any government or person; or
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent on the death, of, or of an interest in—
 - (i) a dwelling used at any time as the home of the spouse or child; or
 - (ii) the household contents of any such dwelling; or
- (e) in the case of death, any premium that would have become payable under a contract of insurance in respect of the life of the deceased passenger if he had lived beyond the time when he died.

10. CONTRIBUTORY NEGLIGENCE.

(1) Effect shall be given to Article 21 of the Warsaw Convention in accordance with this section.

(2) Where, in an action under the Convention against a carrier, the carrier proves that the damage was caused or contributed to by the negligence of the

passenger or the consignor, the damages recoverable shall be assessed in accordance with this section.

(3) The court shall first determine the damages that would have been recoverable if—

- (a) there were no limit on the amount of the damages fixed by or in accordance with the Convention; and
- (b) there had been no negligence on the part of the passenger or consignor.

(4) The damages determined under Subsection (3) shall be reduced to such extent as the court thinks just and equitable having regard to the share of the passenger or the consignor in responsibility for the damage.

(5) Where the damages as reduced in accordance with Subsection (4) exceed the maximum liability of the carrier fixed by or in accordance with the Convention, the court shall further reduce the damages to that maximum amount.

11. ACTIONS AGAINST PARTIES TO THE CONVENTION WHO UNDERTAKE CARRIAGE BY AIR.

(1) A Party to the Convention which has not availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention shall be deemed, for the purposes of an action under the Convention brought in a court in the country to enforce a claim in respect of carriage undertaken by that Party, to have submitted to the jurisdiction of the court.

(2) This section does not authorize the issue of execution against the property of a Party to the Convention.

12. EVIDENCE OF CERTAIN MATTERS.

(1) The Minister may, by notice in the National Gazette, declare—

- (a) that a country specified in the notice is a country that has ratified or adhered to the Hague Protocol, and the date on which the ratification or adherence became effective; or
- (b) that a country specified in the notice has, at the time of deposit of its instrument of ratification of or adherence to the Hague Protocol, declared that its acceptance of the Protocol does not apply to a territory or territories specified in the notice; or
- (c) that a country specified in the notice has duly made a declaration under Article XXVI of the Hague Protocol, and the date on which the declaration became effective; or
- (d) that a country specified in the notice has duly extended the application of the Hague Protocol to a territory or territories specified in the notice; or

- (e) the extent (if any) to which a Party to the Hague Protocol has availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention; or
- (f) that a country specified in the notice has denounced the Hague Protocol in respect of—
 - (i) all of the territories for the foreign relations of which it is responsible; or
 - (ii) any such territory specified in the notice,and the date on which the denunciation became effective.

(2) A notice under this section is evidence of the matters declared.

Division 2.

Carriage to which the Warsaw Convention without the Hague Protocol Applies.

13. INTERPRETATION OF DIVISION 2.

(1) In this Division, “**the Convention**” means the Warsaw Convention as in force, unaffected by the Hague Protocol, between Papua New Guinea and any other country.

(2) For the purposes of this Division, a reference in the Convention to the territory of a High Contracting Party to the Convention shall be read as a reference to the territories in respect of which a Party declared, under Section 15, to be a High Contracting Party to the Convention is declared, under that section, to be bound by the Convention.

14. PROVISIONS OF CONVENTION TO HAVE FORCE OF LAW.

(1) Subject to this Division, the provisions of the Convention have the force of law in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing the carriage.

(2) Unless the contrary intention appears, a reference in this Division to the Convention shall be read as a reference to the provisions of the Convention as having the force of law by virtue of this section.

15. EVIDENCE OF CERTAIN MATTERS.

- (1) The Minister may, by notice in the National Gazette, declare—
 - (a) who are the High Contracting Parties to the Convention; and
 - (b) the territory in respect of which any such Party is bound by the Convention; and
 - (c) the extent (if any) to which any Party has availed himself of the provisions of the Additional Protocol to the Convention.

(2) A notice under this section is evidence of the matters declared.

16. CONVERSION OF FRANCS.

For the purposes of an action against a carrier, any sum in francs mentioned in Article 22 of the Convention shall be converted into Papua New Guinea currency at the rate of exchange prevailing on the date on which the amount of any damages to be paid by the carrier is ascertained by the court.

17. ADOPTION OF CERTAIN PROVISIONS OF DIVISION 1.

The provisions of Sections 6 to 11 (inclusive) other than Section 6(10) apply for the purposes of this Division as if contained in this Division.

18. DURATION OF DIVISION 2.

(1) This Division continues in force until a date to be fixed by the Head of State, acting on advice, by notice in the National Gazette, being a date not earlier than the date on which a denunciation by Papua New Guinea of the Convention in accordance with Article 39 of the Convention takes effect.

(2) On the date fixed under Subsection (1), this Division shall be deemed to be repealed and Section 63 of the *Interpretation Act 1975* applies as if this Division had been repealed by an Act other than this Act.

Division 3.

Carriage to which the Guadalajara Convention Applies.

19. PROVISIONS OF CONVENTION TO HAVE FORCE OF LAW.

Subject to Divisions 1 and 2 as effected by Section 20, the provisions of the Guadalajara Convention have the force of law in relation to any carriage by air to which the Convention applies.

20. MODIFICATION OF DIVISIONS 1 AND 2.

In relation to carriage to which the Guadalajara Convention applies, references in Division 1 (other than in Section 5) and in Division 2 (other than in Section 14) to "the Convention" shall be read as including references to the provisions of the Guadalajara Convention as having the force of law by virtue of this Division.

21. EVIDENCE OF CERTAIN MATTERS.

(1) The Minister may, by notice in the National Gazette, publish information as to—

(a) the coming into operation of the Guadalajara Convention; or

- (b) the States that have or have not taken any action referred to in Article XI, XII, XIV, XV or XVI of that Convention and to the particulars of any action so taken.
- (2) A notice under this section is evidence of the matters specified in the notice.

PART III. – OTHER CARRIAGE TO WHICH THIS ACT APPLIES.**22. INTERPRETATION OF PART III.**

(1) In this Part, unless the contrary intention appears–

“**airline licence**” means an airline licence in force under the Civil Aviation Regulation;

“**baggage**”, in relation to a passenger, means–

- (a) registered baggage; or
- (b) baggage, personal effects or other articles, not being registered baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or a servant or agent of the carrier) on behalf of the passenger, while the passenger is on board an aircraft for the purposes of carriage to which this Part applies or during the course of any of the operations of embarking or disembarking;

“**charter licence**” means a charter licence in force under the Civil Aviation Regulation;

“**commercial transport operations**” means operations in which an aircraft is used, for hire or reward, for the carriage of passengers or cargo;

“**contract**” includes an arrangement made without consideration;

“**registered baggage**”, in relation to a passenger, means baggage, personal effects or other articles registered with the carrier as baggage intended to be carried under a contract for carriage of the passenger to which this Part applies.

(2) For the purposes of this Part, where, by reason of a contract of charter or other contract between the holder of an airline licence or a charter licence and another person, any persons or baggage are or is carried, or are or is to be carried, in an aircraft while it is being operated by the holder of the licence, the contract shall be deemed to be a contract of carriage providing for that carriage.

23. APPLICATION OF PART III.

This Part applies to the carriage of a passenger who is or is to be carried in an aircraft being operated by the holder of an airline licence or a charter licence in the course of commercial transport operations, or in an aircraft being operated between Papua New Guinea and another country, not being carriage to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies.

24. LIABILITY OF CARRIER FOR DEATH OR INJURY.

Subject to this Part, where this Part applies to the carriage of a passenger the carrier is liable for damage sustained by reason of the death of the passenger or any personal injury suffered by the passenger resulting from an accident that took place

on board the aircraft or in the course of any of the operations of embarking or disembarking.

25. LIABILITY OF CARRIER IN RESPECT OF BAGGAGE.

(1) Where this Part applies to the carriage of a passenger, the carrier is liable under this Part, and not otherwise, for damage sustained in the event of the destruction or loss of, or injury to, baggage of the passenger, if the occurrence that causes the destruction, loss or injury takes place during the period of the carriage by air unless the carrier proves that—

- (a) he and his servants and agents took all necessary measures to avoid the destruction, loss or injury; or
- (b) it was impossible for him or them to take such measures.

(2) For the purposes of Subsection (1) but subject to Subsection (3), the period of the carriage by air comprises—

- (a) in relation to baggage other than registered baggage—the period during which the passenger is on board the aircraft or is in the course of any of the operations of embarking or disembarking; and
- (b) in relation to registered baggage—the period during which the baggage is in the charge of the carrier whether on board the aircraft or elsewhere.

(3) In proceedings under this section in respect of registered baggage, if the carrier proves that within a period of 12 hours after the arrival of the aircraft at the place to which the baggage was to be carried in the aircraft the baggage was available for collection by the passenger at a place at which, under the contract, the baggage was to be or could be made available to the passenger, the period of the carriage by air shall not be deemed to include any time after the expiration of that period of 12 hours.

(4) In the application of Section 35 in relation to an action under this Part in respect of baggage other than registered baggage, the carrier shall be deemed to have proved that the damage was caused by the negligence of the passenger, except so far as the passenger proves that he was not responsible for the damage.

26. COMPLAINT TO BE MADE IN RESPECT OF BAGGAGE.

(1) For the purposes of an action under this Part, evidence proving receipt of registered baggage, without complaint, by the person entitled to delivery is evidence that the baggage has been delivered in good condition and in accordance with the contract of carriage.

(2) Except in case of fraud on the part of the carrier, no action lies against a carrier under this Part in respect of baggage, unless the passenger, or a person acting on his behalf, has complained by writing delivered to the carrier or served on the carrier by post or in such other manner as is prescribed—

- (a) in the case of injury to registered baggage or of loss or destruction of part only of an item of registered baggage—within the period of three days after the date of receipt by or on behalf of the passenger of the baggage, or of the remainder of the item of baggage, as the case may be; or
- (b) in the case of loss or destruction of the whole of an item of registered baggage—within the period of 21 days after the date on which the baggage should have been placed at the disposal of the passenger; or
- (c) in the case of injury to, or loss or destruction of, baggage other than registered baggage—within the period of three days after the date on which the carriage of the passenger ended.

(3) Where the court is satisfied that it is just and equitable to do so by reason of special circumstances, a court having jurisdiction in actions under this Part in respect of baggage may, by order, grant leave to a person to institute or continue an action in the court in relation to baggage notwithstanding that there has been a failure to complain in accordance with Subsection (2) within the time fixed by that subsection.

(4) Subsection (2) does not apply in relation to an action in respect of which leave has been granted under Subsection (3).

27. LIMITATION OF LIABILITY.

(1) Subject to the regulations relating to passenger tickets, the liability of the carrier under this Part in respect of each passenger, by reason of his injury or death, is limited to the sum of K30,000.00 or such higher sum as specified in the contract of carriage.

(2) Subject to the regulations relating to baggage checks, the liability of the carrier under this Part in respect of the baggage of any one passenger, being baggage that is or includes registered baggage, is limited to the sum of K300.00 or such higher sum as specified in the contract of carriage.

(3) The liability of the carrier under this Part in respect of the baggage, other than registered baggage, of any one passenger is limited to the sum of K30.00 or such higher sum as specified in the contract of carriage.

28. CONTRACTING OUT.

(1) Any provision of an agreement tending to relieve the carrier of liability in accordance with this Part or to fix a lower limit than the appropriate limit of liability provided by this Part is null and void, but the nullity of such a provision does not involve the nullity of the whole contract of carriage.

(2) Subsection (1) does not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of goods carried.

29. SERVANTS AND AGENTS OF CARRIER.

(1) Where an action in respect of any damage is brought against a servant or agent of a carrier, the servant or agent, if he proves that he acted within the scope of his employment or authority, is entitled to avail himself of the limits of liability (if any) that the carrier himself would be entitled to invoke under Section 27 in an action against him in respect of the damage.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents shall not exceed the limits referred to in Subsection (1).

(3) The right to bring an action against a servant or agent of a carrier in respect of any damage, being damage that gave rise to a cause of action against the carrier under this Part, is extinguished if the action is not brought within the time specified in Section 30.

30. LIMITATION OF ACTIONS.

The right of a person to damages under this Part is extinguished if an action is not brought by him or for his benefit within two years after the date of arrival of the aircraft at the destination, or, where the aircraft did not arrive at the destination—

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

(b) the date on which the carriage stopped,

whichever is the later.

31. LIABILITY IN RESPECT OF DEATH.

(1) This section applies in relation to liability imposed by this Part on a carrier in respect of the death of a passenger (including the injury that resulted in the death).

(2) Subject to Section 33, the liability under this Part is in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that has resulted in the death of the passenger.

(3) Subject to Subsection (4), the liability is enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death, and for the purposes of this subsection—

(a) the passenger's family shall be deemed to consist of the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger;
and

(b) in ascertaining the members of the passenger's family, an illegitimate person or an adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(4) To the extent that the damages recoverable include—

- (a) loss of earnings or profits up to the date of death; or
- (b) funeral, medical or hospital expenses paid or incurred by the passenger before his death or by his personal representative,

the liability is enforceable for the benefit of the personal representative of the passenger in his capacity as personal representative.

(5) The action to enforce the liability may be brought by—

- (a) the personal representative of the passenger; or
- (b) a person for whose benefit the liability is, under the preceding provisions of this section, enforceable,

but only one action shall be brought in respect of the death of any one passenger, and the action is for the benefit of all persons for whose benefit the liability is so enforceable who—

- (c) are resident in the country; or
- (d) not being resident in the country, express the desire to take the benefit of the action.

(6) The damages recoverable in the action include—

- (a) loss of earnings or profits up to the date of death; and
- (b) the reasonable expenses of the funeral of the passenger; and
- (c) medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of a passenger.

(7) In awarding damages, the court is not limited to the financial loss resulting from the death of the passenger.

(8) Subject to Subsection (7), the amount recovered in the action shall, after the deduction of any costs not recovered from the defendant, be divided amongst the persons entitled in such proportions as the court directs.

(9) At any stage of the proceedings the court may make any such order as appears to it to be just and equitable in view of—

- (a) the provisions of this Part limiting the liability of the carrier; and
- (b) any proceedings that have been, or are likely to be, commenced against the carrier, whether in or outside the country.

32. LIABILITY IN RESPECT OF INJURY.

Subject to Section 33, the liability of a carrier under this Part in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

33. CERTAIN LIABILITIES NOT EXCLUDED.

This Part does not exclude any liability of a carrier—

- (a) to indemnify an employer of a passenger or any other person in respect of any liability of, or payments made by, the employer or other person providing for compensation, however described, in the nature of workers' compensation; or
- (b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger,

but this section does not operate to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with this Part.

34. PROCEEDS OF INSURANCE POLICIES, ETC.

In assessing damages in respect of liability under this Part, there shall not be taken into account by way of reduction of the damages—

- (a) any sum paid or payable, under a contract of insurance, on the death of, or an injury to, a passenger; or
- (b) any sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union; or
- (c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent on the death or injury, by any government or person; or
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent on the death, of, or of an interest in—
 - (i) a dwelling used at any time as the home of the spouse or child; or
 - (ii) the household contents of any such dwelling; or
- (e) in the case of death, any premium that would have become payable under a contract of insurance in respect of the life of the deceased passenger if he had lived beyond the time when he died.

35. CONTRIBUTORY NEGLIGENCE.

(1) Where, in an action under this Part, against a carrier the carrier proves that the damage was caused or contributed to by the negligence of the passenger, the damages recoverable shall be assessed in accordance with this section.

(2) The court shall first determine the damages that would have been recoverable if—

- (a) there were no limit on the amount of the damages fixed by or in accordance with this Part; and
- (b) there had been no negligence on the part of the passenger.

(3) The damages determined under Subsection (2) shall be reduced to such extent as the court thinks just and equitable having regard to the share of the passenger in responsibility for the damage.

(4) Where the damages as reduced in accordance with Subsection (3) exceed the maximum liability of the carrier fixed by or in accordance with this Part, the court shall further reduce the damages to that maximum amount.

36. REGULATIONS RELATING TO PASSENGER TICKETS AND BAGGAGE CHECKS.

The regulations may make provision relating to passenger tickets and baggage checks in respect of passengers or baggage in relation to whom or which this Part applies, in relation to—

- (a) the circumstances in which such tickets and checks must be issued by carriers; and
- (b) matters to be included in such tickets and checks; and
- (c) the non-application of any provision of Section 27 (except where the limit of liability under the provision is a sum specified in the contract of carriage) where specified provisions of the regulations relating to the issue, form and contents of such tickets or checks have not been complied with.

37. APPLICATION OF PART III TO CARGO.

(1) Subject to Subsection (2), the regulations may provide for applying, with such exceptions, adaptations and modifications as are prescribed, the provisions of the Warsaw Convention, the Hague Protocol and the Guadalajara Convention and any of the provisions of this Act to and in relation to the carriage of cargo, being carriage in relation to which, if it were the carriage of passengers, this Part would apply.

(2) No adaptation or modification under Subsection (1), of the provisions of Article 22 of the Warsaw Convention, as replaced by Article XI of the Hague Protocol, has the effect of limiting the liability of the carrier to a sum less than the sum to which his liability would be limited if those provisions were applied without adaptation or modification.

PART IV. – DAMAGE CAUSED BY AIRCRAFT TO PERSONS ON SURFACE.

Division 1.

Preliminary.

38. INTERPRETATION OF PART IV.

In this Part, unless the contrary intention appears—

“**contracting State**” means a country, other than Papua New Guinea, that is bound by the Convention;

“**the Convention**” means the Rome Convention.

Division 2.

Damage to which the Rome Convention Applies.

39. CONVENTION TO HAVE THE FORCE OF LAW.

(1) The provisions of the Convention have the force of law.

(2) Unless the contrary intention appears, a reference in this Division to the Convention shall be read as a reference to the provisions of the Convention as having the force of law by virtue of this section.

40. ACTIONS UNDER CONVENTION.

(1) Where damage in relation to which the Convention applies occurs in the country, no action under the Convention in respect of the damage lies in the country except in a court having jurisdiction in relation to the place where the damage occurs.

(2) Where an action under the Convention is pending in the National Court, no action under the Convention arising out of the same incident (other than an action instituted before the institution of the action in the National Court) lies in any other court.

(3) Where actions under the Convention arising out of a single incident are pending in two or more courts, the National Court may, on the application of the defendant in any such action (or, if there is more than one defendant, on the application of any defendant), order any such action to be removed into the National Court, on such terms and conditions as the National Court thinks proper.

41. CONSOLIDATION OF ACTIONS.

(1) Where two or more actions under the Convention, arising out of a single incident, are pending in a court, the court may make such orders as it thinks proper, on such terms and conditions as it thinks fit, for the purpose of ensuring, so far as the interests of justice and convenience permit, that all of the actions are consolidated for disposal in a single proceeding.

(2) Subsection (1) does not prejudice any power of a court under any other law with respect to any actions to which that subsection applies.

42. LIABILITY IN RESPECT OF DEATH.

(1) This section applies in relation to the liability imposed by the Convention on a person in respect of the death of another person.

(2) The action to enforce the liability may be brought by—

- (a) the personal representative of the deceased person; or
- (b) one of the persons who suffered damage by reason of the death,

but only one action shall be brought in the country in respect of the death of any one person and the action is for the benefit of all persons for whose benefit the liability is enforceable who—

- (c) are resident in the country; or
- (d) not being resident in the country, express the desire to take the benefit of the action.

(3) The damages recoverable in the action include—

- (a) loss of earnings or profits up to the date of death; and
- (b) the reasonable expenses of the funeral of the deceased person; and
- (c) medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the deceased person.

(4) In awarding damages, the court is not limited to the financial loss resulting from the death of the deceased person.

(5) Subject to Subsection (6), the amount recovered in the action shall, after the deduction of any costs not recovered from the defendant, be divided amongst the persons entitled in such proportions as the court directs.

(6) At any stage of the proceedings the court may make any such order as appears to it to be just and equitable in view of the provisions of the Convention limiting the liability of the defendant.

43. PROCEEDS OF INSURANCE POLICIES IN RELATION TO DEATH OR INJURY.

In assessing damages in respect of liability under the Convention in relation to the death of, or personal injury to, a person, there shall not be taken into account—

- (a) any sum paid or payable under a contract of insurance, on the death of, or personal injury to, the person; or
- (b) any sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union; or

- (c) in the case of death, any premium that would have become payable under a contract of insurance in respect of the life of the person if he had lived beyond the time when he died.

44. ACTIONS AGAINST CONTRACTING STATES AS OPERATORS OF AIRCRAFT.

(1) For the purposes of an action under the Convention brought in a court to enforce a claim in respect of damage for which, under the Convention, the contracting State is liable as operator of the aircraft concerned or as being otherwise connected with the aircraft, a contracting State shall be deemed to have submitted to the jurisdiction of the court.

(2) This section does not authorize the issue of execution against the property of a contracting State.

45. EVIDENCE OF CERTAIN MATTERS.

(1) The Minister may, by notice in the National Gazette, declare—

- (a) that a country specified in the notice is a country that has ratified or adhered to the Convention, and the date on which the ratification or adherence became effective; or
- (b) that a country specified in the notice has, at the time of deposit of its instrument of ratification of or adherence to the Convention, declared that its acceptance of the Convention does not apply to a territory or territories specified in the notice; or
- (c) that a country specified in the notice has extended the application of the Convention to a territory or territories specified in the notice, and the date as from which the extension took effect; or
- (d) that a country specified in the notice has made a declaration under Paragraph 3 of Article 37 of the Convention in relation to a territory specified in the notice; or
- (e) that a country specified in the notice has denounced the Convention in respect of—
 - (i) all of the territories for the foreign relations of which it is responsible; or
 - (ii) any such territory specified in the notice,

and the date on which the denunciation became effective.

(2) A notice under this section is evidence of the matters declared.

Division 3.***Other Damage to which Part IV Applies.*****46. APPLICATION OF DIVISION 3.**

(1) This Division applies to an aircraft registered in Papua New Guinea that, while being moved between Papua New Guinea and another country, is in flight in Papua New Guinea—

- (a) in the course of a journey of the aircraft between a place in Papua New Guinea and a place outside Papua New Guinea (with or without intermediate stopping-places in Papua New Guinea); or
- (b) in the course of a journey of the aircraft between two places in Papua New Guinea, if passengers or goods are being carried in the aircraft in part performance of a contract for their carriage by a single carrier between a place in Papua New Guinea and a place outside Papua New Guinea.

(2) This Division also applies in relation to an aircraft, not being an aircraft registered in Papua New Guinea or in a contracting State, that is being moved between Papua New Guinea and another country and is in flight in Papua New Guinea.

(3) For the purposes of this section, an aircraft shall be deemed to be in flight from the moment when power is applied for the purposes of take-off until the moment when the landing run ends.

47. APPLICATION OF PROVISIONS OF CONVENTION.

(1) Subject to this section, the provisions of the Convention (other than Chapter III, Article 20, 23, 27, 28 and 29 and Chapter VI) apply, by virtue of this section, to and in relation to an aircraft to which this Division applies.

(2) For the purposes of this section, where in a provision of the Convention that applies by virtue of this section there is a reference to the Convention, that reference shall be read as a reference to the provisions of the Convention that apply by virtue of this section, as so applying.

(3) The provisions of Chapter II, and of Articles 19 and 21, of the Convention do not apply to an aircraft referred to in Section 46(2), and in the application of the provisions of the Convention that apply to such an aircraft all references to the limits of liability provided by Chapter II of the Convention shall be deemed to be omitted.

48. APPLICATION OF CERTAIN PROVISIONS OF DIVISION 2.

Sections 40, 41, 42 and 43 apply for the purposes of this Division in like manner as they apply for the purposes of Division 2, but in the application of those sections any reference to the Convention shall be read as a reference to the provisions of the Convention that apply by virtue of this Division, as so applying.

49. COMPULSORY INSURANCE.

(1) The Minister may, by written notice, prohibit a person from operating an aircraft in circumstances in which the aircraft would be an aircraft to which this Division applies unless there is in force a certificate in writing issued by the Minister certifying that the person is insured, to the satisfaction of the Minister, against liability under this Division to an extent corresponding to the extent to which an operator may be required to be insured under Chapter III of the Convention.

(2) While a notice under this section is in force, a person to whom the notice has been given must not contravene the notice.

(3) For the purposes of this section and of any notice under this section, a person shall be deemed to operate an aircraft if the circumstances are such that, if the aircraft were one to which the Convention applies, he would be the operator of the aircraft for the purposes of the Convention.

PART V. – MISCELLANEOUS.**50. STOWAWAYS.**

(1) Where a person travels in an aircraft without the consent of the carrier and Part II or Part III would apply in relation to the carriage if he were a passenger carried, under a contract for his carriage for reward, between the place where he boarded the aircraft and his place of disembarkation, the liability (if any) of the carrier, or of his servants or agents, in respect of the person and his baggage is subject to the limits as to amounts that are applicable in respect of passengers under that Part.

(2) This section does not impose any liability on a carrier, or a servant or agent of a carrier, to which he is not subject apart from this section.

(3) For the purposes of this section, the place of disembarkation of a person shall be deemed to be the next scheduled stopping-place after the place at which he boards the aircraft or, if he continues on board after the aircraft leaves that next scheduled stopping-place, the scheduled stopping-place next after the last stopping-place from which the aircraft departed with him on board.

51. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, the Warsaw Convention, the Warsaw Convention as affected by the Hague Protocol, the Guadalajara Convention and the Rome Convention.

(2) The regulations in respect of the Rome Convention may prescribe, in particular, matters in relation to—

- (a) the manner in which requirements may be made under Chapter III of the Convention and the authority that is to be the appropriate authority in Papua New Guinea for any purpose in relation to that Chapter; and
- (b) the manner in which evidence may be given, in proceedings under the Convention, of a certificate of airworthiness of an aircraft or of the identity of the registered owner of an aircraft.

(3) The regulations for carrying out or giving effect to Article 20 of the Rome Convention may include regulations—

- (a) prescribing the courts by which judgements referred to in that Article may be enforced and the formalities that are to be complied with before such a judgement may be so enforced; and
- (b) providing that an application to a court for execution of a judgement referred to in that Article shall be made by way of, or shall be preceded by, an application for registration of the judgement in the court; and

- (c) providing that a court to which such an application for registration of a judgement is made may refuse registration of the judgement, or set aside registration, on any ground on which, under that Article, execution of the judgement may be refused or where, for any other reason, the judgement is found not to be enforceable under that Article; and
- (d) prohibiting, restricting or regulating actions or proceedings in courts on foreign judgements in respect of liability under the Convention, for the purpose of preventing the use of such actions or proceedings as a means of evading the limitations on rights of execution of such judgements contained in Article 20 of the Convention.

SCHEDULE 1 – CONVENTION ON DAMAGE CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTIES ON THE SURFACE.

Sec. 1.

CONVENTION

THE STATES SIGNATORY to this Convention

MOVED by a desire to ensure adequate compensation for persons who suffer damage caused on the surface by foreign aircraft, while limiting in a reasonable manner the extent of the liabilities incurred for such damage in order not to hinder the development of international civil air transport, and also

CONVINCED of the need for unifying to the greatest extent possible, through an international convention, the rules applying in the various countries of the world to the liabilities incurred for such damage,

HAVE APPOINTED to such effect the undersigned Plenipotentiaries who, duly authorized, HAVE AGREED AS FOLLOWS:

CHAPTER I—PRINCIPLES OF LIABILITY.

Article 1

1. Any person who suffers damage on the surface shall, upon proof only that the damage was caused by an aircraft in flight or by any person or thing falling therefrom, be entitled to compensation as provided by this Convention. Nevertheless there shall be no right to compensation if the damage is not a direct consequence of the incident giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.

2. For the purpose of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing run ends. In the case of an aircraft lighter than air, the expression "in flight" relates to the period from the moment when it becomes detached from the surface until it becomes again attached thereto.

Article 2

1. The liability for compensation contemplated by Article 1 of this Convention shall attach to the operator of the aircraft.

2. (a) For the purposes of this Convention the term "operator" shall mean the person who was making use of the aircraft at the time the damage was caused, provided that if control of the navigation of the aircraft was retained by the person from whom the right to make use of the aircraft was derived, whether directly or indirectly, that person shall be considered the operator.

(b) A person shall be considered to be making use of an aircraft when he is using it personally or when his servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority.

3. The registered owner of the aircraft shall be presumed to be the operator and shall be liable as such unless, in the proceedings for the determination of his liability, he proves that some other person was the operator and, in so far as legal procedures permit, takes appropriate measures to make that other person a party in the proceedings.

Article 3

If the person who was the operator at the time the damage was caused had not the exclusive right to use the aircraft for a period of more than fourteen days, dating from the moment when the right to use commenced, the person from whom such right was derived shall be liable jointly and severally with the operator, each of them being bound under the provisions and within the limits of liability of this Convention.

Article 4

If a person makes use of an aircraft without the consent of the person entitled to its navigational control, the latter, unless he proves that he has exercised due care to prevent such use, shall be jointly and severally liable with the unlawful user for damage giving a right to compensation under Article 1, each of them being bound under the provisions and within the limits of liability of this Convention.

Article 5

Any person who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of an armed conflict or civil disturbance, or if such person has been deprived of the use of the aircraft by act of public authority.

Article 6

1. Any person who would otherwise be liable under the provisions of this Convention shall not be liable for damage if he proves that the damage was caused solely through the negligence or other wrongful act or omission of the person who suffers the damage or of the latter's servants or agents. If the person liable proves that the damage was contributed to by the negligence or other wrongful act or omission of the person who suffers the damage, or of his servants or agents, the compensation shall be reduced to the extent to which such negligence or wrongful act or omission contributed to the damage. Nevertheless there shall be no such exoneration or reduction if, in the case of the negligence or other wrongful act or omission of a servant or agent, the person who suffers the damage proves that his servant or agent was acting outside the scope of his authority.

2. When an action is brought by one person to recover damages arising from the death or injury of another person, the negligence or other wrongful act or omission of such other person, or of his servants or agents, shall also have the effect provided in the preceding paragraph.

Article 7

When two or more aircraft have collided or interfered with each other in flight and damage for which a right to compensation as contemplated in Article 1 results, or when two or more aircraft have jointly caused such damage, each of the aircraft concerned shall be considered to have caused the damage and the operator of each aircraft shall be liable, each of them being bound under the provisions and within the limits of liability of this Convention.

Article 8

The persons referred to in paragraph 3 of Article 2 and in Articles 3 and 4 shall be entitled to all defences which are available to an operator under the provisions of this Convention.

Article 9

Neither the operator, the owner, any person liable under Article 3 or Article 4, nor their respective servants or agents, shall be liable for damage on the surface caused by an aircraft in flight or any person or thing falling therefrom otherwise than as expressly provided in this Convention. This rule shall not apply to any such person who is guilty of a deliberate act or omission done with intent to cause damage.

Article 10

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 II.—EXTENT OF LIABILITY.**Article 11**

1. Subject to the provisions of Article 12, the liability for damage giving a right to compensation under Article 1, for each aircraft and incident, in respect of all persons liable under this Convention, shall not exceed:

- (a) 500,000 francs for aircraft weighing 1,000 kilograms or less;
- (b) 500,000 francs plus 400 francs per kilogram over 1,000 kilograms for aircraft weighing more than 1,000 but not exceeding 6,000 kilograms;
- (c) 2,500,000 francs plus 250 francs per kilogram over 6,000 kilograms for aircraft weighing more than 6,000 but not exceeding 20,000 kilograms;
- (d) 6,000,000 francs plus 150 francs per kilogram over 20,000 kilograms for aircraft weighing more than 20,000 but not exceeding 50,000 kilograms;
- (e) 10,500,000 francs plus 100 francs per kilogram over 50,000 kilograms for aircraft weighing more than 50,000 kilograms.

2. The liability in respect of loss of life or personal injury shall not exceed 500,000 francs per person killed or injured.

3. "Weight" means the maximum weight of the aircraft authorized by the certificate of airworthiness for take-off, excluding the effect of lifting gas when used.

4. The sums mentioned in francs in this Article refer to a currency unit consisting of 65½ milligrams of gold of millesimal fineness 900. 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, or, in cases covered by Article 14, at the date of the allocation.

Article 12

1. If the person who suffers damage proves that it was caused by a deliberate act or omission of the operator, his servants or agents, done with intent to cause damage, the liability of the operator shall be unlimited; provided that in the case of such act or omission of such servant or agent, it is also proved that he was acting in the course of his employment and within the scope of his authority.

2. If a person wrongfully takes and makes use of an aircraft without the consent of the person entitled to use it, his liability shall be unlimited.

Article 13

1. Whenever, under the provisions of Article 3 or Article 4, two or more persons are liable for damage, or a registered owner who was not the operator is made liable as such as provided in paragraph 3 of Article 2, the persons who suffer damage shall not be entitled to total compensation greater than the highest indemnity which may be awarded under the provisions of this Convention against any one of the persons liable.

2. When the provisions of Article 7 are applicable, the person who suffers the damage shall be entitled to be compensated up to the aggregate of the limits applicable with respect to each of the aircraft involved, but no operator shall be liable for a sum in excess of the limit applicable to his aircraft unless his liability is unlimited under the terms of Article 12.

Article 14

If the total amount of the claims established exceeds the limit of liability applicable under the provisions of this Convention, the following rules shall apply, taking into account the provisions of paragraph 2 of Article 11:

- (a) If the claims are exclusively in respect of loss of life or personal injury or exclusively in respect of damage to property, such claims shall be reduced in proportion to their respective amounts.
- (b) If the claims are both in respect of loss of life or personal injury and in respect of damage to property, one half of the total sum distributable shall be appropriated preferentially to meet claims in respect of loss of life and personal injury and, if insufficient, shall be distributed proportionately between the claims concerned. The remainder of the total sum distributable shall be distributed proportionately among the claims in respect of damage to property and the portion not already covered of the claims in respect of loss of life and personal injury.

CHAPTER III.—SECURITY FOR OPERATOR'S LIABILITY.

Article 15

1. Any Contracting State may require that the operator of an aircraft registered in another Contracting State shall be insured in respect of his liability for damage sustained in its territory for which a right to compensation exists under Article 1 by means of insurance up to the limits applicable according to the provisions of Article 11.

2. (a) The Insurance shall be accepted as satisfactory if it conforms to the provisions of this Convention and has been effected by an insurer authorized to effect such insurance under the laws of the State where the aircraft is registered or of the State where the insurer has his residence or principal place of business, and whose financial responsibility has been verified by either of those States.

(b) If insurance has been required by any State under paragraph 1 of this Article, and a final judgment in that State is not satisfied by payment in the currency of that State, any Contracting State may refuse to accept the insurer as financially responsible until such payment, if demanded, has been made.

3. Notwithstanding the last preceding paragraph the State overflown may refuse to accept as satisfactory insurance effected by an insurer who is not authorized for that purpose in a Contracting State.

4. Instead of insurance, any of the following securities shall be deemed satisfactory if the security conforms to Article 17:

- (a) a cash deposit in a depository maintained by the Contracting State where the aircraft is registered or with a bank authorized to act as a depository by that State;
- (b) a guarantee given by a bank authorized to do so by the Contracting State where the aircraft is registered, and whose financial responsibility has been verified by that State;
- (c) a guarantee given by the Contracting State where the aircraft is registered, if that State undertakes that it will not claim immunity from suit in respect of that guarantee.

5. Subject to paragraph 6 of this Article, the State overflown may also require that the aircraft shall carry a certificate issued by the insurer certifying that insurance has been effected in accordance with the provisions of this Convention, and specifying the person or persons whose liability is secured thereby, together with a certificate of endorsement issued by the appropriate authority in the State where the aircraft is registered or in the State where the insurer has his residence or principal place of business certifying the financial responsibility of the insurer. If other security is furnished in accordance with the provisions of paragraph 4 of this Article, a certificate to that effect shall be issued by the appropriate authority in the State where the aircraft is registered.

6. The certificate referred to in paragraph 5 of this Article need not be carried in the aircraft if a certified copy has been filed with the appropriate authority designated by the State overflown or, if the International Civil Aviation Organization agrees, with that Organization, which shall furnish a copy of the certificate to each contracting State.

7. (a) Where the State overflown has reasonable grounds for doubting the financial responsibility of the insurer, or of the bank which issues a guarantee under paragraph 4 of this Article, that State may request additional evidence of financial responsibility, and if any question arises as to the adequacy of that evidence the dispute affecting the States concerned shall, at the request of one of those States, be submitted to an arbitral tribunal which shall be either the Council of the International Civil Aviation Organization or a person or body mutually agreed by the parties.

(b) Until this tribunal has given its decision the insurance or guarantee shall be considered provisionally valid by the State overflown.

8. Any requirements imposed in accordance with this Article shall be notified to the Secretary General of the International Civil Aviation Organization who shall inform each Contracting State thereof.

9. For the purpose of this Article, the term "insurer" includes a group of insurers, and for the purpose of paragraph 5 of this Article, the phrase "appropriate authority in a State" includes the appropriate authority in the highest political subdivision thereof which regulates the conduct of business by the insurer.

Article 16

1. The insurer or other person providing security required under Article 15 of the liability of the operator may, in addition to the defences available to the operator, and the defence of forgety, set up only the following defences against claims based on the application of this Convention:

(a) that the damage occurred after the security ceased to be effective. However, if the security expires during a flight, it shall be continued in force until the next landing specified in the flight plan, but no longer than twenty-four hours; and if the security ceases to be effective for any reason other than the expiration of its term, or a change of operator, it shall be continued until fifteen days after notification to the appropriate authority of the State which certifies the financial responsibility of the insurer or the guarantor that the security has ceased to be effective, or until effective withdrawal of the certificate of the insurer or the certificate of guarantee if such a certificate has been required under paragraph 5 of Article 15, whichever is the earlier;

(b) that the damage occurred outside the territorial limits provided for by the security, unless flight outside of such limits was caused by *force majeure*, assistance justified by the circumstances, or an error in piloting, operation or navigation.

2. The State which has issued or endorsed a certificate pursuant to paragraph 5 of Article 15 shall notify the termination or cessation, otherwise than by the expiration of its term, of the insurance or other security to the interested contracting States as soon as possible.

3. Where a certificate of insurance or other security is required under paragraph 5 of Article 15 and, the operator is changed during the period of the validity of the security, the security shall apply to the liability under this Convention of the new operator, unless he is already covered by other insurance or security or is an unlawful user, but not beyond fifteen days from the time when the insurer or guarantor notifies the appropriate authority of the State where the certificate was issued that the security has become ineffective or until the effective withdrawal of the certificate of the insurer if such a certificate has been required under paragraph 5 of Article 15, whichever is the shorter period.

4. The continuation in force of the security under the provisions of paragraph 1 of this Article shall apply only for the benefit of the person suffering damage.

5. Without prejudice to any right of direct action which he may have under the law governing the contract of insurance or guarantee, the person suffering damage may bring a direct action against the insurer or guarantor only in the following cases:—

- (a) where the security is continued in force under the provisions of paragraph 1(a) and (b) of this Article;
- (b) the bankruptcy of the operator.

6. Excepting the defences specified in paragraph 1 of this Article, the insurer or other person providing security may not, with respect to direct actions brought by the person suffering damage based upon application of this Convention, avail himself of any grounds of nullity or any right of retroactive cancellation.

7. The provisions of this Article shall not prejudice the question whether the insurer or guarantor has a right of recourse against any other person.

Article 17

1. If security is furnished in accordance with paragraph 4 of Article 15, it shall be specifically and preferentially assigned to payment of claims under the provisions of this Convention.

2. The security shall be deemed sufficient if, in the case of an operator of one aircraft, it is for an amount equal to the limit applicable according to the provisions of Article 11, and in the case of an operator of several aircraft, if it is for an amount not less than the aggregate of the limits of liability applicable to the two aircraft subject to the highest limits.

3. As soon as notice of a claim has been given to the operator, the amount of the security shall be increased up to a total sum equivalent to the aggregate of:

- (a) the amount of the security then required by paragraph 2 of this Article, and
- (b) the amount of the claim not exceeding the applicable limit of liability.

This increased security shall be maintained until every claim has been disposed of.

Article 18

Any sums due to an operator from an insurer shall be exempt from seizure and execution by creditors of the operator until claims of third parties under this Convention have been satisfied.

CHAPTER IV.—RULES OF PROCEDURE AND LIMITATION OF ACTIONS.

Article 19

If a claimant has not brought an action to enforce his claim or if notification of such claim has not been given to the operator within a period of six months from the date of the incident which gave rise to the damage, the claimant shall only be entitled to compensation out of the amount for which the operator remains liable after all claims made within that period have been met in full.

Article 20

1. Actions under the provisions of this Convention may be brought only before the courts of the Contracting State where the damage occurred. Nevertheless, by agreement between any one or more claimants and any one or more defendants, such claimants may take action before the courts of any other Contracting State, but no such proceedings shall have the effect of prejudicing in any way the rights of persons who bring actions in the State where the damage occurred. The parties may also agree to submit disputes to arbitration in any Contracting State.

2. Each Contracting State shall take all necessary measures to ensure that the defendant and all other parties interested are notified of any proceedings concerning them and have a fair and adequate opportunity to defend their interests.

3. Each Contracting State shall so far as possible ensure that all actions arising from a single incident and brought in accordance with paragraph 1 of this Article are consolidated for disposal in a single proceeding before the same court.

4. Where any final judgment, including a judgment by default, is pronounced by a court competent in conformity with this Convention, on which execution can be issued according to the procedural law of that court, the judgment shall be enforceable upon compliance with the formalities prescribed by the laws of the Contracting State, or of any territory, State or province thereof, where execution is applied for:

- (a) in the Contracting State where the judgment debtor has his residence or principal place of business or;
- (b) if the assets available in that State and in the State where the judgment was pronounced are insufficient to satisfy the judgment, in any other Contracting State where the judgment debtor has assets.

5. Notwithstanding the provisions of paragraph 4 of this Article, the court to which application is made for execution may refuse to issue execution if it is proved that any of the following circumstances exist:

- (a) the judgment was given by default and the defendant did not acquire knowledge of the proceedings in sufficient time to act upon it;
- (b) the defendant was not given a fair and adequate opportunity to defend his interests;
- (c) the judgment is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgment or an arbitral award which, under the law of the State where execution is sought, is recognized as final and conclusive;

- (d) the judgment has been obtained by fraud of any of the parties;
- (e) the right to enforce the judgment is not vested in the person by whom the application for execution is made.

6. The merits of the case may not be reopened in proceedings for execution under paragraph 4 of this Article.

7. The court to which application for execution is made may also refuse to issue execution if the judgment concerned is contrary to the public policy of the State in which execution is requested.

8. If, in proceedings brought according to paragraph 4 of this Article, execution of any judgment is refused on any of the grounds referred to in sub-paragraph (a), (b) or (d) of paragraph 5 or paragraph 7 of this Article, the claimant shall be entitled to bring a new action before the courts of the State where execution has been refused. The judgment rendered in such new action may not result in the total compensation awarded exceeding the limits applicable under the provisions of this Convention. In such new action the previous judgment shall be a defence only to the extent to which it has been satisfied. The previous judgment shall cease to be enforceable as soon as the new action has been started.

The right to bring a new action under this paragraph shall, notwithstanding the provisions of Article 21, be subject to a period of limitation of one year from the date on which the claimant has received notification of the refusal to execute the judgment.

9. Notwithstanding the provisions of paragraph 4 of this Article, the court to which application for execution is made shall refuse execution of any judgment rendered by a court of a State other than that in which the damage occurred until all the judgments rendered in that State have been satisfied.

The court applied to shall also refuse to issue execution until final judgment has been given on all actions filed in the State where the damage occurred by those persons who have complied with the time limit referred to in Article 19, if the judgment debtor proves that the total amount of compensation which might be awarded by such judgments might exceed the applicable limit of liability under the provisions of this Convention.

Similarly such court shall not grant execution when, in the case of actions brought in the State where the damage occurred by those persons who have complied with the time limit referred to in Article 19, the aggregate of the judgments exceeds the applicable limit of liability, until such judgments have been reduced in accordance with Article 14.

10. Where a judgment is rendered enforceable under this Article, payment of costs recoverable under the judgment shall also be enforceable. Nevertheless the court applied to for execution may, on the application of the judgment debtor, limit the amount of such costs to a sum equal to ten *per centum* of the amount for which the judgment is rendered enforceable. The limits of liability prescribed by this Convention shall be exclusive of costs.

11. Interest not exceeding four *per centum* per annum may be allowed on the judgment debt from the date of the judgment in respect of which execution is granted.

12. An application for execution of a judgment to which paragraph 4 of this Article applies must be made within five years from the date when such judgment became final.

Article 21

1. Actions under this Convention shall be subject to a period of limitation of two years from the date of the incident which caused the damage.

2. The grounds for suspension or interruption of the period referred to in paragraph 1 of this Article shall be determined by the law of the court trying the action; but in any case the right to institute an action shall be extinguished on the expiration of three years from the date of the incident which caused the damage.

Article 22

In the event of the death of the person liable, an action in respect of liability under the provisions of this Convention shall lie against those legally responsible for his obligations.

CHAPTER V.—APPLICATION OF THE CONVENTION AND GENERAL PROVISIONS.

Article 23

1. This Convention applies to damage contemplated in Article 1 caused in the territory of a Contracting State by an aircraft registered in the territory of another Contracting State.

2. For the purpose of this Convention a ship or aircraft on the high seas shall be regarded as part of the territory of the State in which it is registered.

Article 24

This Convention shall not apply to damage caused to an aircraft in flight, or to persons or goods on board such aircraft.

Article 25

This Convention shall not apply to damage on the surface if liability for such damage is regulated either by a contract between the person who suffers such damage and the operator or the person entitled to use the aircraft at the time the damage occurred, or by the law relating to workmen's compensation applicable to a contract of employment between such persons.

Article 26

This Convention shall not apply to damage caused by military, customs or police aircraft.

Article 27

Contracting States will, as far as possible, facilitate payment of compensation under the provisions of this Convention in the currency of the State where the damage occurred.

Article 28

If legislative measures are necessary in any Contracting State to give effect to this Convention, the Secretary General of the International Civil Aviation Organization shall be informed forthwith of the measures so taken.

Article 29

As between Contracting States which have also ratified the International Convention for the Unification of Certain Rules relating to Damage caused by Aircraft to Third Parties on the Surface opened for signature at Rome on the 29 May 1933, the present Convention upon its entry into force shall supersede the said Convention of Rome.

Article 30

For the purposes of this Convention:

"Person" means any natural or legal person, including a State.

"Contracting State" means any State which has ratified or adhered to this Convention and whose denunciation thereof has not become effective.

"Territory of a State" means the metropolitan territory of a State and all territories for the foreign relations of which that State is responsible, subject to the provisions of Article 36.

CHAPTER VI—FINAL PROVISIONS.**Article 31**

This Convention shall remain open for signature on behalf of any State until it comes into force in accordance with the provisions of Article 33.

Article 32

1. This Convention shall be subject to ratification by the signatory States.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article 33

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force, for each State which deposits its instrument of ratification after that date, on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the United Nations by the Secretary General of the International Civil Aviation Organization.

Article 34

1. This Convention shall, after it has come into force, be open for adherence by any non-signatory State.
2. The adherence of a State shall be effected by the deposit of an instrument of adherence with the International Civil Aviation Organization and shall take effect as from the ninetieth day after the date of the deposit.

Article 35

1. Any Contracting State may denounce this Convention by notification of denunciation to the International Civil Aviation Organization.

2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation; nevertheless, in respect of damage contemplated in Article 1 arising from an incident which occurred before the expiration of the six months period, the Convention shall continue to apply as if the denunciation had not been made.

Article 36

1. This Convention shall apply to all territories for the foreign relations of which a Contracting State is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article or paragraph 3 of Article 37.

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

3. Any Contracting State may subsequently, by notification to the International Civil Aviation Organization, extend the application of this Convention to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article or paragraph 3 of Article 37. The notification shall take effect as from the ninetieth day after its receipt by the Organization.

4. Any Contracting State may denounce this Convention, in accordance with the provisions of Article 35, separately for any or all of the territories for the foreign relations of which such State is responsible.

Article 37

1. When the whole or part of the territory of a Contracting State is transferred to a non-contacting State, this Convention shall cease to apply to the territory so transferred, as from the date of the transfer.

2. When part of the territory of a Contracting State becomes an independent State responsible for its own foreign relations, this Convention shall cease to apply to the territory which becomes an independent State, as from the date on which it becomes independent.

3. When the whole or part of the territory of another State is transferred to a Contracting State, the Convention shall apply to the territory so transferred as from the date of the transfer; provided that, if the territory transferred does not become part of the metropolitan territory of the Contracting State concerned, that Contracting State may, before or at the time of the transfer, declare by notification to the International Civil Aviation Organization that the Convention shall not apply to the territory transferred unless a notification is made under paragraph 3 of Article 36.

Article 38

The Secretary General of the International Civil Aviation Organization shall give notice to all signatory and adhering States and to all States members of the Organization or of the United Nations:

- (a) of the deposit of any instrument of ratification or adherence and the date thereof, within thirty days from the date of the deposit, and
- (b) of the receipt of any denunciation or of any declaration or notification made under Article 36 or 37 and the date thereof, within thirty days from the date of the receipt.

The Secretary General of the Organization shall also notify these States of the date on which the Convention comes into force in accordance with paragraph 1 of Article 33.

Article 39

No reservations may be made to this Convention.

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

DONE at Rome on the seventh day of the month of October of the year One Thousand Nine Hundred and Fifty-two in the English, French and Spanish languages, each text being of equal authenticity.

This Convention shall be deposited with the International Civil Aviation Organization where, in accordance with Article 31, it shall remain open for signature, and the Secretary General of the Organization shall send certified copies thereof to all signatory and adhering States and to all States members of the Organization or of the United Nations.

**SCHEDULE 2 – CONVENTION FOR THE UNIFICATION OF CERTAIN
RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR.**

Sec. 3(1).

CONVENTION

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 a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting party is not deemed to be international 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 a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Article 2

1. The 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 does not apply to carriage performed under the terms of any international postal Convention.

CHAPTER II.—DOCUMENTS OF CARRIAGE.

SECTION 1.—PASSENGER TICKET.

Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:—

- (a) the place and date of issue;
- (b) the place of departure and of destination;
- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the carrier or carriers;

(e) a statement that the carriage is subject to the rules relating to liability established by this Convention.

2. 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 the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

SECTION 2.—BAGGAGE CHECK.

Article 4

1. For the carriage of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

2. The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

3. The baggage check shall contain the following particulars:—

- (a) the place and date of issue;
- (b) the place of departure and of destination;
- (c) the name and address of the carrier or carriers;
- (d) the number of the passenger ticket;
- (e) a statement that delivery of the baggage will be made to the bearer of the baggage check;
- (f) the number and weight of the packages;
- (g) the amount of the value declared in accordance with Article 22(2);
- (h) a statement that the carriage is subject to the rules relating to liability established by this Convention.

4. 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 accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d)(f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

SECTION 3.—AIRWAYBILL.

Article 5

1. Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

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

Article 6

1. The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

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

3. The carrier shall sign on acceptance of the cargo.

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

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

Article 7

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

Article 8

The air waybill shall contain the following particulars:—

- (a) the place and date of its execution;
- (b) the place of departure and of destination;
- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the cargo;
- (h) the number of the packages, the method of packing and the particular marks or numbers upon them;
- (i) the weight, the quantity and the volume or dimensions of the cargo;
- (j) the apparent condition of the cargo and of the packing;
- (k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;
- (l) if the cargo is sent for payment on delivery, the price of the cargo, and, if the case so requires, the amount of the expenses incurred;
- (m) the amount of the value declared in accordance with Article 22(2);
- (n) the number of parts of the air waybill;
- (o) the documents handed to the carrier to accompany the air waybill;
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;
- (q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

Article 9

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.
2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

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

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill or the cargo, 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 cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

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

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

Article 14

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

Article 15

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

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

Article 16

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

2. The carrier is under no obligation to 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 any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

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

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

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

Article 19

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

Article 20

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

2. In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

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

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery 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 actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

Article 23

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

Article 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

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seized of the case, is considered to be equivalent to wilful misconduct.

2. Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his employment.

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 three days from the date of receipt in the case of baggage and seven 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 fourteen days from the date on which the baggage or cargo has been placed at his disposal.

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

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

Article 27

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

Article 28

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

2. Questions of procedure shall be governed by the law of the Court seized of the case.

Article 29

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

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

Article 30

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

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

3. As regards baggage or cargo, the passenger or consignee 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, or damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignee or consignee.

CHAPTER IV.—PROVISIONS RELATING TO COMBINED CARRIAGE**Article 31**

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

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

CHAPTER V.—GENERAL AND FINAL PROVISIONS.

Article 32

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

Article 33

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

Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

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

Article 36

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

Article 37

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

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

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

Article 28

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 29

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

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

Article 40

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

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

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

Article 41

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

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

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.

**SCHEDULE 3 – PROTOCOL TO AMEND THE CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL
CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929.**

Sec. 3(2).

PROTOCOL

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929,

HAVE AGREED as follows:

CHAPTER I.—AMENDMENTS TO THE CONVENTION

Article I

In Article 1 of the Convention—

(a) paragraph 2 shall be deleted and replaced by the following:—

"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."

(b) paragraph 3 shall be deleted and replaced by the following:—

"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 II

In Article 2 of the Convention—

paragraph 2 shall be deleted and replaced by the following:—

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

Article III

In Article 3 of the Convention—

(a) paragraph 1 shall be deleted and replaced by the following:—

1. In respect of the carriage of passengers a ticket shall be delivered containing
 - (a) an indication of the places of departure and destination;
 - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
 - (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage."

(b) paragraph 2 shall be deleted and replaced by the following:—

2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph 1(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22."

Article IV

In Article 4 of the Convention—

(a) paragraphs 1, 2 and 3 shall be deleted and replaced by the following:—

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."

(b) paragraph 4 shall be deleted and replaced by the following:—

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

Article V

In Article 6 of the Convention—

paragraph 3 shall be deleted and replaced by the following:—

- "3. The carrier shall sign prior to the loading of the cargo on board the aircraft."

Article VI

Article 8 of the Convention shall be deleted and replaced by the following:—

"The air waybill shall contain:

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

Article 9 of the Convention shall be deleted and replaced by the following:—

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

Article VIII

In Article 10 of the Convention—

paragraph 2 shall be deleted and replaced by the following:—

- "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 IX

To Article 15 of the Convention—

the following paragraph shall be added:—

- "3. Nothing in this Convention prevents the issue of a negotiable air waybill."

Article X

Paragraph 2 of Article 20 of the Convention shall be deleted.

Article XI

Article 22 of the Convention shall be deleted and replaced by the following:—

"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 seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

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

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

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

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

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

Article XII

In Article 23 of the Convention, the existing provision shall be renumbered as paragraph 1 and another paragraph shall be added as follows:—

"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 XIII

In Article 25 of the Convention—

paragraphs 1 and 2 shall be deleted and replaced by the following:—

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

Article XIV

After Article 25 of the Convention, the following article shall be inserted:—

"Article 25 A

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

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

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

Article XV

In Article 26 of the Convention—

paragraph 2 shall be deleted and replaced by the following:—

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."

Article XVI

Article 34 of the Convention shall be deleted and replaced by the following:—

"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 XVII

After Article 40 of the Convention, the following Article shall be inserted:—

"Article 40 A

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 of 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."

CHAPTER II.—SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED.

Article XVIII

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

CHAPTER III.—FINAL CLAUSES.

Article XIX

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

Article XX

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

Article XXI

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

Article XXII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

Article XXIII

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
2. Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

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

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

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

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

Article XXVI

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

Article XXVII

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

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

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

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

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

SCHEDULE 4

Sec. 3(3).

CONVENTION – SUPPLEMENTARY TO THE WARSAW CONVENTION, FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER.

THE STATES SIGNATORY TO THE PRESENT CONVENTION

NOTING that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage

CONSIDERING that it is therefore desirable to formulate rules to apply in such circumstances

HAVE AGREED AS FOLLOWS:

Article I

In this Convention:

- (a) 'Warsaw Convention' means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;
- (b) 'contracting carrier' means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignee or with a person acting on behalf of the passenger or consignee;
- (c) 'actual carrier' means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

Article II

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

Article III

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

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

Article IV

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

Article V

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

Article VI

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

Article VII

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

Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

Article IX

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

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

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

Article X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

Article XI

Until the date on which this Convention comes into force in accordance with the provisions of Article XIII, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article XII

1. This Convention shall be subject to ratification by the signatory States.

2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

Article XIII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organization by the Government of the United States of Mexico.

Article XIV

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

2. The Accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.

Article XV

1. Any Contracting State may denounce this Convention by notification addressed to the Government of the United States of Mexico.

2. Denunciation shall take effect six months after the date of receipt by the Government of the United States of Mexico of the notification of denunciation.

Article XVI

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the Government of the United States of Mexico that the Convention shall extend to any of the territories for whose international relations it is responsible.

2. The Convention shall, ninety days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.

3. Any Contracting State may denounce this Convention, in accordance with the provisions of Article XV, separately for any or all of the territories for the international relations of which such State is responsible.

Article XVII

No reservation may be made to this Convention.

Article XVIII

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organization and to all States Members of the United Nations or of any of the Specialized Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article XIII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XVI and the date thereof.

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

DONE at Guadalajara on the eighteenth day of September One Thousand Nine Hundred and Sixty-one in three authentic texts drawn up in the English, French and Spanish languages. In case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail. The Government of the United States of Mexico will establish an official translation of the text of the Convention in the Russian language.

This Convention shall be deposited with the Government of the United States of Mexico with which, in accordance with Article XI, it shall remain open for signature, and that Government shall send certified copies thereof to the International Civil Aviation Organization and to all States Members of the United Nations or of any Specialized Agency.