



Jersey

CARRIAGE BY AIR (JERSEY) ORDER 1967

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APPENDIX



Jersey

CARRIAGE BY AIR (JERSEY) ORDER 1967

Jersey Order in Council 8/1967

“CARRIAGE BY AIR (JERSEY) ORDER, 1967”,

AVEC

ACTES DE LA COUR ROYALE

Y RELATIF.

(Enregistré le 23 juin 1967).

Jersey Order in Council 8/1967 Carriage by Air (Jersey) Order, 196

“CARRIAGE BY AIR (JERSEY) ORDER, 1967”.

À LA COUR ROYALE DE L’ÎLE DE JERSEY.

L’An 1967, le 23e jour de juin.

MONSIEUR LE DÉPUTÉ BAILLI ayant présenté à la Cour un Ordre de Sa Très Excellente Majesté en Conseil en date du 24 mai 1967, transmettant pour enregistrement et publication dans l’Île copies de deux certains Actes de Parlement, intitulés : -

“The Carriage by Air Act, 1961 (1961 Chapter 27)” ; et

“The Carriage by Air (Supplementary Provisions) Act, 1962 (1962 Chapter 43)” ;

Lecture en ayant été donnée :

LA COUR, conformément aux conclusions du Procureur Général de la Reine, a ordonné, en execution dudit Ordre, que tant lesdits Actes de Parlement que ledit Ordre les transmettant soit enregistrés sur les records de cette Ile et publiés par l’Officier au lieu ordinaire à jour de marché, afin que toutes personnes puissent en avoir connaissance.

P.E. LE COUTEUR,

Greffier Judiciaire.

Jersey Order in Council 8/1967 Carriage by Air (Jersey) Order, 196

À LA COUR ROYALE DE L'ÎLE DE JERSEY.

L'An 1967, le 23e jour de juin.

MONSIEUR LE DÉPUTÉ BAILLI ayant présenté à la Cour deux Ordres de Sa Très Excellente Majesté en Conseil en date du 24 mai 1967 intitulés : -

“The Carriage by Air (Jersey) Order, 1967” et

“The Carriage by Air Acts (Application of Provisions) (Jersey) Order, 1967”;

Lecture en ayant été donnée:

LA COUR, conformément aux conclusions du Procureur General de la Reine, a ordonné que lesdits Ordres soient enregistrés sur les records de l'Île et publiés par l'Officier au lieu ordinaire à jour de marché, afin que toutes personnes puissent en avoir connaissance.

P.E. LE COUTEUR,

Greffier Judiciaire.

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CARRIAGE BY AIR (JERSEY) ORDER, 1967.

At the Court at Buckingham Palace.

The 24th day of May, 1967.

Present,

The Queen's Most Excellent Majesty in Council.

HER MAJESTY, in pursuance of the powers conferred upon Her by Section 9 of the Carriage by Air Act, 1961 and by Section 5(1) of the Carriage by Air (Supplementary Provisions) Act, 1962 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows : -

1. The Carriage by Air Act, 1961 and the Carriage by Air (Supplementary Provisions) Act, 1962 shall extend to the Bailiwick of Jersey subject to the exceptions, adaptations and modifications specified in the Schedule to this Order.

2. This Order and any Order in Council made under Section 2 or 7 or order made under Section 4 of the said Act of 1961 shall be registered by the Royal Court of Jersey.

3. The Interpretation Act, 1889 shall apply for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

4. This Order may be cited as the Carriage by Air (Jersey) Order, 1967 and shall come into operation on 1st June, 1967.

W.G. AGNEW

Jersey Order in Council 8/1967 Carriage by Air (Jersey) Order, 196

SCHEDULE

EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS IN THE EXTENSION TO JERSEY OF
THE CARRIAGE BY AIR ACT, 1961 AND THE CARRIAGE BY AIR (SUPPLEMENTARY
PROVISIONS) ACT, 1962

PART I

CARRIAGE BY AIR ACT, 1961

1. In section 1(1) for the words “the United Kingdom” there shall be substituted the word “Jersey”.
2. For section 1(3) there shall be substituted the following subsection : -

“(3) This section shall come into force on 1st June, 1967.”.
3. In section 3 for the words from “section” to “Northern Ireland” there shall be substituted the words “Article 2 of the Fatal Accidents (Jersey) Law, 1962”.
4. In section 4 for the words “the United Kingdom” wherever they occur there shall be substituted the word “Jersey” and in subsection (1)(b) of that section the words “of any part” shall be omitted.
5. In section 5(3) the words after “references to an arbitration” shall be omitted.
6. For section 6 there shall be substituted the following section : -

“6. It is hereby declared that for the purposes of Article 21 in Schedule 1 to this Act the provisions of Article 6 of the Law Reform (Miscellaneous Provisions) (Jersey) Law, 1960 are provisions of the law of Jersey under which a court may exonerate the carrier wholly or partly from his liability.”.
7. In section 8 for the words “the United Kingdom” there shall be substituted the word “Jersey”.
8. Section II shall be omitted.
9. For section 12 there shall be substituted the following section : -

“Construction of references to Laws of the States of Jersey

12. Any reference in this Act to a Law of the States of Jersey shall be construed as a reference to that Law as amended whether before or after the passing of this Act and to any such Law made thereafter which re-enacts that Law with or without modification.”.
10. In section 14(3) the words before “the Acts” shall be omitted.

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11. In Schedule 2 the reference to the Civil Aviation Act, 1949 shall be construed as a reference to that Act as extended to Jersey by the Civil Aviation Act (Channel Islands) Order, 1953 and the entries in that Schedule, other than those relating to that Act, the Carriage by Air Act, 1932 and the Nuclear Installations (Licensing and Insurance) Act, 1959, shall be omitted.

PART II

CARRIAGE BY AIR (SUPPLEMENTARY PROVISIONS) ACT, 1962

12. In section 1(1) for the words “the United Kingdom” there shall be substituted the word “Jersey”.

13. For section 2(1) there shall be substituted the following subsection : -

“(1) In the Schedule to this Act ‘the Warsaw Convention’ means the Convention set out in Schedule 1 to the Carriage by Air Act, 1961, but, in relation to rights or liabilities arising out of an occurrence before 1st June, 1967, ‘the Warsaw Convention’ means the Convention set out in Schedule 1 to the Carriage by Air Act, 1932.”.

14. Section 2(3) shall be omitted.

15. In section 4 for the words from “the day on which” to “comes into force” there shall be substituted the words “1st June, 1967”.

16. Section 5(3) and (4) shall be omitted.

17. Section 6(2) shall be omitted.

18. For section 7(2) there shall be substituted the following subsection : -

“(2) This Act shall come into force on 1st June, 1967.”.

19. In section 7(3) the words after “foregoing subsection” shall be omitted.

PART III

GENERAL

20. Any reference to the Carriage by Air Act, 1932⁴ shall be construed as a reference to that Act as extended to Jersey by the Carriage by Air (Jersey) Order, 1935,⁵ by the Carriage by Air (Jersey) Order, 1951⁶ and by the Carriage by Air (Jersey) Order, 1961,⁷ and any reference to the Carriage by Air Act, 1961 or to the Carriage by Air (Supplementary Provisions) Act, 1962 shall be construed as a reference to that Act as extended to Jersey by this Order.

⁴ Tome VII, page 373.

⁵ Tome VII, page 371.

⁶ Tome 1951–1953, page 55.

⁷ Tome 1961–1962, page 1.

Jersey Order in Council 8/1967 Carriage by Air (Jersey) Order, 196

21. In this Schedule “Jersey” means the Bailiwick of Jersey.

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CARRIAGE BY AIR ACT, 1961.

9 & 10 Eliz. 2 Ch. 27.

ARRANGEMENT OF SECTIONS.

Section

1. Convention to have force of law.
2. Designation of High Contracting Parties.
3. Fatal accidents.
4. Limitation of liability.
5. Time for bringing proceedings.
6. Contributory negligence.
7. Power to exclude aircraft in use for military purposes.
8. Actions against High Contracting Parties.
9. Application to British possessions, etc.
10. Application to carriage by air not governed by Convention.
11. Application to Scotland.
12. Application to Northern Ireland.
13. Application to Crown.
14. Short title, interpretation and repeals.

Schedules :

First Schedule – The Warsaw Convention with the Amendments
made in it by The Hague Protocol.

Second Schedule – Repeals.



CHAPTER 27

AN ACT to give effect to the Convention concerning international carriage by air known as “the Warsaw Convention as amended at The Hague, 1955”, to enable the rules contained in that Convention to be applied, with or without modification, in other cases and, in particular, to non-international carriage by air ; and for connected purposes.

[22nd June, 1961].

BE it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : -⁸

CONVENTION TO HAVE FORCE OF LAW

1.-(1) Subject to this section, the provisions of the Convention known as “the Warsaw Convention as amended at The Hague, 1955” as set out in the First Schedule to this Act shall, so far as they relate to the rights and liabilities of carriers, carriers’ servants and agents, passengers, consignors, consignees and other persons, and subject to the provisions of this Act, have the force of law in [Jersey] in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage ; and the Carriage by Air Act, 1932 (which gives effect to the Warsaw Convention in its original form), shall cease to have effect.

(2) If there is any inconsistency between the text in English in Part I of the First Schedule to this Act and the text in French in Part II of that Schedule, the text in French shall prevail.

[(3) This section shall come into force on 1st June, 1967.]

(4) This section shall not apply so as to affect rights or liabilities arising out of an occurrence before the coming into force of this section.

DESIGNATION OF HIGH CONTRACTING PARTIES

2.-(1) Her Majesty may by Order in Council from time to time certify who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the provisions of the Additional Protocol at the end of the Convention as set out in the First Schedule to this Act.

(2) Paragraph (2) of Article 40A in the First Schedule to this Act shall not be read as extending references in that Schedule to the territory of a High Contracting Party (except such as are references to the territory of any State, whether a High

⁸ Deletions and words in square brackets indicate adaptations and modifications made by the Carriage by Air (Jersey) Order, 1967.

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Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.

(3) An Order in Council under this section shall, except so far as it has been superseded by a subsequent Order, be conclusive evidence of the matters so certified.

(4) An Order in Council under this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient.

FATAL ACCIDENTS

3. References in [Article 2 of the Fatal Accidents (Jersey) Law, 1962⁹] to a wrongful act, neglect or default shall include references to any occurrence which gives rise to a liability under Article 17 in the First Schedule to this Act.

LIMITATION OF LIABILITY

4.-(1) It is hereby declared that the limitations on liability in Article 22 in the First Schedule to this Act apply whatever the nature of the proceedings by which liability may be enforced and that, in particular –

- (a) those limitations apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor, and
- (b) the limitation for each passenger in paragraph (1) of the said Article 22 applies to the aggregate liability of the carrier in all proceedings which may be brought against him under the law * * * of [Jersey], together with any proceedings brought against him outside [Jersey].

(2) A court before which proceedings are brought to enforce a liability which is limited by the said Article 22 may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of the said Article 22, and of any other proceedings which have been, or are likely to be, commenced in [Jersey] or elsewhere to enforce the liability in whole or in part.

(3) Without prejudice to the last foregoing sub-section, a court before which proceedings are brought to enforce a liability which is limited by the said Article 22 shall, where the liability is, or may be, partly enforceable in other proceedings in [Jersey] or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

(4) The Minister of Aviation may from time to time by order made by statutory instrument specify the respective amounts which for the purposes of the said Article 22, and in particular of paragraph (5) of that Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.

(5) References in this section to the said Article 22 include, subject to any necessary modifications, references to that Article as applied by Article 25A.

TIME FOR BRINGING PROCEEDINGS

⁹ Tome 1961–1962, page 592.

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5.-(1) No action against a carrier's servant or agent which arises out of damage to which the Convention relates shall, if he was acting within the scope of his employment, be brought after more than 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) Article 29 in the First Schedule of this Act shall not be read as applying to any proceedings for contribution between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which the said Article 29 applies after the expiration of two years from the time when judgment is obtained against the person seeking to obtain the contribution.

(3) The foregoing provisions of this section and the provisions of the said Article 29 shall have effect as if references in those provisions to an action included references to an arbitration ; * * * .

CONTRIBUTORY NEGLIGENCE

[6.] It is hereby declared that for the purposes of Article 21 in the First Schedule to this Act the provisions of Article 6 of the Law Reform (Miscellaneous Provisions) (Jersey) Law, 1960¹⁰ are provisions of the law of Jersey under which a court may exonerate the carrier wholly or partly from his liability.]

POWER TO EXCLUDE AIRCRAFT IN USE FOR MILITARY PURPOSES

7.-(1) Her Majesty may from time to time by Order in Council direct that this section shall apply, or shall cease to apply, to the United Kingdom or any other State specified in the Order.

(2) The Convention as set out in the First Schedule to this Act shall not apply to the carriage of persons, cargo and baggage for the military authorities of a State to which this section applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by or on behalf of those authorities.

ACTIONS AGAINST HIGH CONTRACTING PARTIES

8. Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol at the end of the Convention as set out in the First Schedule to this Act shall, for the purposes of any action brought in a court in [Jersey] in accordance with the provisions of Article 28 in the said Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on ; but nothing in this section shall authorise the issue of execution against the property of any High Contracting Party.

APPLICATION TO BRITISH POSSESSIONS, ETC

9.-(1) Her Majesty may by Order in Council direct that this Act shall extend, subject to such exceptions, adaptations and modifications as may be specified in the Order, to –

¹⁰ Tome 1957–1960, page 455 and Tome 1961–1962, pages 594 and 595.

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- (a) the Isle of Man ;
- (b) any of the Channel Islands ;
- (c) any colony or protectorate, protected state or United Kingdom trust territory.

The references in this subsection to a protectorate, to a protected state and to a United Kingdom trust territory shall be construed as if they were references contained in the British Nationality Act, 1948.

(2) An Order in Council under this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient, and may be varied or revoked by a subsequent Order in Council.

APPLICATION TO CARRIAGE BY AIR NOT GOVERNED BY CONVENTION

10.-(1) Her Majesty may by Order in Council apply the First Schedule to this Act, together with any other provisions of this Act, to carriage by air, not being carriage by air to which the Convention applies, of such descriptions as may be specified in the Order, subject to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) An Order in Council under this section may be made to apply to any of the countries or places mentioned in paragraphs (a), (b) and (c) of subsection (1) of the last foregoing section.

(3) An Order in Council under this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient, and may confer any functions under the Order on a Minister of the Crown in the United Kingdom or on any Governor or other authority in any of the countries or places mentioned in paragraphs (a), (b) and (c) of subsection (1) of the last foregoing section, including a power to grant exemptions from any requirements imposed by such an Order.

(4) An Order in Council under this section may be varied or revoked by a subsequent Order in Council.

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

Provided that this subsection shall not apply to an Order which applies only to the Isle of Man or all or any of the Channel Islands.

* * * * *

[CONSTRUCTION OF REFERENCES TO LAWS OF THE STATES OF JERSEY

12. Any reference in this Act to a Law of the States of Jersey shall be construed as a reference to that Law as amended whether before or after the passing of this Act and to any such Law made thereafter which re-enacts that Law with or without modification.]

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APPLICATION TO CROWN

13. This Act shall bind the Crown.

SHORT TITLE, INTERPRETATION AND REPEALS

14.-(1) This Act may be cited as the Carriage by Air Act, 1961.

(2) In this Act the expression “court” includes (in an arbitration allowed by the Convention) an arbitrator.

(3) * * * * * the Acts specified in the Second Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule :

Provided that, without prejudice to section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), this subsection shall not affect any rights or liabilities arising out of an occurrence before that date.

*SCHEDULES**FIRST SCHEDULE***THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT BY THE HAGUE
PROTOCOL***PART I*

THE ENGLISH TEXT

CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES RELATING TO
INTERNATIONAL CARRIAGE BY AIR

CHAPTER I

SCOPE – DEFINITIONS

ARTICLE 1

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

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

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

ARTICLE 2

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

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

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CHAPTER II

DOCUMENTS OF CARRIAGE

SECTION I. – PASSENGER TICKET

ARTICLE 3

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

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

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

SECTION 2 – BAGGAGE CHECK

ARTICLE 4

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

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

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

SECTION 3. – AIR WAYBILL

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 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 prior to the loading of the cargo on board the aircraft.

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

(5) If, at the request of the consignor, the carrier makes out the air 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 :

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- (a) an indication of the places of departure and destination ;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place ;
- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

ARTICLE 9

If, with the consent of the carrier, cargo is loaded on board the aircraft without an air 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 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 shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

ARTICLE 11

(1) The air 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.

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(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 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.

(3) Nothing in this Convention prevents the issue of a negotiable 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

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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 enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

ARTICLE 17

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

ARTICLE 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or 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

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

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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 persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments the equivalent capital 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 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.

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ARTICLE 23

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

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

ARTICLE 24

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

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

ARTICLE 25

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

ARTICLE 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is 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 26

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

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at

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the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

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

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

ARTICLE 27

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

ARTICLE 28

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

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

ARTICLE 29

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

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

ARTICLE 30

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

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

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may

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take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

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

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

ARTICLE 35

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

ARTICLE 36

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

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one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 40A

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

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

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

ADDITIONAL PROTOCOL

(With reference to Article 2)

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

PART II

THE FRENCH TEXT

CONVENTION POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES
AU TRANSPORT AERIEN INTERNATIONAL

CHAPITRE 1er

OBJET – DÉFINITIONS

ARTICLE 1er

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

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

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

ARTICLE 2

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

(2) La présente Convention ne s'applique pas au transport du courrier et des colis postaux.

CHAPITRE II

TITRE DE TRANSPORT

SECTION 1. – BILLET DE PASSAGE

ARTICLE 3

(1) Dans le transport de passagers, un billet de passage doit être délivré, contenant:

- (a) l'indication des points de départ et de destination;
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales;
- (c) un avis indiquant que si les passagers entreprennent un voyage comportant une destination finale ou une escale dans un pays autre que le pays de départ, leur transport peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de mort ou de lésion corporelle, ainsi qu'en cas de perte ou d'avarie des bagages.

(2) Le billet de passage fait foi, jusqu'à preuve contraire, de la conclusion et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si du consentement du transporteur, le passager s'embarque sans qu'un billet de passage ait été délivré, ou si le billet ne comporte pas l'avis prescrit à l'alinéa 1 (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22.

SECTION 2. – BULLETIN DE BAGAGES

ARTICLE 4

(1) Dans le transport de bagages enregistrés, un bulletin de bagages doit être délivré qui, s'il n'est pas combiné avec un billet de passage conforme aux

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dispositions de l'article 3, alinéa 1er, ou n'est pas inclus dans un tel billet, doit contenir :

- (a) l'indication des points de départ et de destination ;
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales ;
- (c) un avis indiquant que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de perte ou d'avarie des bagages.

(2) Le bulletin de bagages fait foi, jusqu'à preuve contraire, de l'enregistrement des bagages et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du bulletin n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si le transporteur accepte la garde des bagages sans qu'un bulletin ait été délivré ou si, dans le cas où le bulletin n'est pas combiné avec un billet de passage conforme aux dispositions de l'article 3, alinéa 1 (c), ou n'est pas inclus dans un tel billet, il ne comporte pas l'avis prescrit à l'alinéa 1 (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.

SECTION 3. – LETTRE DE TRANSPORT AÉRIEN

ARTICLE 5

(1) Tout transporteur de marchandises a le droit de demander à l'expéditeur l'établissement et la remise d'un titre appelé : "lettre de transport aérien" ; tout expéditeur a le droit de demander au transporteur l'acceptation de ce document.

(2) Toutefois, l'absence, l'irrégularité ou la perte de ce titre n'affecte ni l'existence, ni la validité du contrat de transport qui n'en sera pas moins soumis aux règles de la présente Convention, sous réserve des dispositions de l'article 9.

ARTICLE 6

(1) La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux et remise avec la marchandise.

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

(3) La signature du transporteur doit être apposée avant l'embarquement de la marchandise à bord de l'aéronef.

(4) La signature du transporteur peut être remplacée par un timbre ; celle de l'expéditeur peut être imprimée ou remplacée par un timbre.

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

ARTICLE 7

Le transporteur de marchandises a le droit de demander à l'expéditeur l'établissement de lettres de transport aérien différentes lorsqu'il y a plusieurs colis.

ARTICLE 8

La lettre de transport aérien doit contenir :

- (a) l'indication des points de départ et de destination ;
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales ;
- (c) un avis indiquant aux expéditeurs que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité des transporteurs en cas de perte ou d'avarie des marchandises.

ARTICLE 9

Si, du consentement du transporteur, des marchandises sont embarquées à bord de l'aéronef sans qu'une lettre de transport aérien ait été établie ou si celle-ci ne comporte pas l'avis prescrit à l'article 8, alinéa (c), le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.

ARTICLE 10

(1) L'expéditeur est responsable de l'exactitude des indications et déclarations concernant la marchandise qu'il inscrit dans la lettre de transport aérien.

(2) Il supportera la responsabilité de tout dommage subi par le transporteur ou par toute autre personne à l'égard de laquelle la responsabilité du transporteur est engagée à raison de ses indications et déclarations irrégulières, inexactes ou incomplètes.

ARTICLE 11

(1) La lettre de transport aérien fait foi, jusqu'à preuve contraire, de la conclusion du contrat, de la réception de la marchandise et des conditions du transport.

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

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ARTICLE 12

(1) L'expéditeur a le droit, sous la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant à l'aérodrome de départ ou de destination, soit en l'arrêtant en cours de route lors d'un atterrissage, soit en la faisant délivrer au lieu de destination ou en cours de route à une personne autre que le destinataire indiqué sur la lettre de transport aérien, soit en demandant son retour à l'aérodrome de départ, pour autant que l'exercice de ce droit ne porte préjudice ni au transporteur, ni aux autres expéditeurs et avec l'obligation de rembourser les frais qui en résultent.

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

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

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

ARTICLE 13

(1) Sauf dans les cas indiqués à l'article précédent, le destinataire a le droit, dès l'arrivée de la marchandise au point de destination, de demander au transporteur de lui remettre la lettre de transport aérien et de lui livrer la marchandise contre le paiement du montant des créances et contre l'exécution des conditions de transport indiquées dans la lettre de transport aérien.

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

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

ARTICLE 14

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

ARTICLE 15

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

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

(3) Rien dans la présente Convention n'empêche l'établissement d'une lettre de transport aérien négociable.

ARTICLE 16

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

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

CHAPITRE III

RESPONSABILITÉ DU TRANSPORTEUR

ARTICLE 17

Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement.

ARTICLE 18

(1) Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés ou de marchandises lorsque l'événement qui a causé le dommage s'est produit pendant le transport aérien.

(2) Le transport aérien, au sens de l'alinéa précédent, comprend la période pendant laquelle les bagages ou marchandises se trouvent sous la garde du transporteur, que ce soit dans un aéroport ou à bord d'un aéronef ou dans un lieu quelconque en cas d'atterrissage en dehors d'un aéroport.

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

ARTICLE 19

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

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ARTICLE 20

Le transporteur n'est pas responsable s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

ARTICLE 21

Dans le cas où le transporteur fait la preuve que la faute de la personne lésée a causé le dommage ou y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

ARTICLE 22

(1) Dans le transport des personnes, la responsabilité du transporteur relative à chaque passager est limitée à la somme de deux cent cinquante mille francs. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois par une convention spéciale avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée.

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

(b) En cas de perte, d'avarie ou de retard d'une partie des bagages enregistrés ou des marchandises, ou de tout objet qui y est contenu, seul le poids total du ou des colis dont il s'agit est pris en considération pour déterminer la limite de responsabilité du transporteur. Toutefois, lorsque la perte, l'avarie ou le retard d'une partie des bagages enregistrés ou des marchandises, ou d'un objet qui y est contenu, affecte la valeur d'autres colis couverts par le même bulletin de bagages ou la même lettre de transport aérien, le poids total de ces colis doit être pris en considération pour déterminer la limite de responsabilité.

(3) En ce qui concerne les objets dont le passager conserve la garde, la responsabilité du transporteur est limitée à cinq mille francs par passager.

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

(5) Les sommes indiquées en francs dans le présent article sont considérées comme se rapportant à une unité monétaire constituée par soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Ces sommes

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peuvent être converties dans chaque monnaie nationale en chiffres ronds. La conversion de ces sommes en monnaies nationales autres que la monnaie-or s'effectuera en cas d'instance judiciaire suivant la valeur-or de ces monnaies à la date du jugement.

ARTICLE 23

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

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

ARTICLE 24

(1) Dans les cas prévus aux articles 18 et 19 toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

(2) Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs.

ARTICLE 25

Les limites de responsabilité prévues à l'article 22 ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur ou de ses préposés fait, soit avec l'intention de provoquer un dommage, soit téméairement et avec conscience qu'un dommage en résultera probablement, pour autant que, dans le cas d'un acte ou d'une omission de préposés, la preuve soit également apportée que ceux-ci ont agi dans l'exercice de leur fonctions.

ARTICLE 25A

(1) Si une action est intentée contre un préposé du transporteur à la suite d'un dommage visé par la présente Convention, ce préposé, s'il prouve qu'il a agi dans l'exercice de ses fonctions, pourra se prévaloir des limites de responsabilité que peut invoquer ce transporteur en vertu de l'article 22.

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

(3) Les dispositions des alinéas 1 et 2 du présent article ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du préposé fait, soit avec l'intention de provoquer un dommage, soit téméairement et avec conscience qu'un dommage en résultera probablement.

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ARTICLE 26

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

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

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

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

ARTICLE 27

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

ARTICLE 28

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

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

ARTICLE 29

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

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

ARTICLE 30

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

(2) Au cas d'un tel transport, le voyageur ou ses ayants droit ne pourront recourir que contre le transporteur ayant effectué le transport au cours duquel

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l'accident ou le retard s'est produit, sauf dans le cas où, par stipulation expresse, le premier transporteur aura assuré la responsabilité pour tout le voyage.

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

CHAPITRE IV

DISPOSITIONS RELATIVES AUX TRANSPORTS COMBINÉS

ARTICLE 31

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

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

CHAPITRE V

DISPOSITIONS GÉNÉRALES ET FINALES

ARTICLE 32

Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article 28, alinéa 1.

ARTICLE 33

Rien dans la présente Convention ne peut empêcher un transporteur de refuser la conclusion d'un contrat de transport ou de formuler des règlements qui ne sont pas en contradiction avec les dispositions de la présente Convention.

ARTICLE 34

Les dispositions des articles 3 à 9 inclus relative aux titres de transport ne sont pas applicables au transport effectué dans des circonstances extraordinaires en dehors de toute opération normale de l'exploitation aérienne.

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ARTICLE 35

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

ARTICLE 36

La présente Convention est rédigée en français en un seul exemplaire qui restera déposé aux archives du Ministère des Affaires Etrangères de Pologne, et dont une copie certifiée conforme sera transmise par les soins du Gouvernement polonais au Gouvernement de chacune des Hautes Parties Contractantes.

* * * * *

ARTICLE 40A

(1) * * * *

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

* * * * *

PROTOCOLE ADDITIONNEL

AD ARTICLE 2

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

SECOND SCHEDULE

REPEALS

<i>Session and Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
22 & 23 Geo. 5, c.36. * *	The Carriage by Air Act, 1932. ¹¹ * *	The whole Act. * *
12, 13 & 14 Geo. 6, c.67.	The Civil Aviation Act, 1949. ¹²	In section forty-two in sub-section (6), the words "the Carriage by Air Act, 1932, or". Section fifty-four.

¹¹ Tome VII, page 370, Tome 1951–1953, page 55 and Tome 1961–1962, page 1.

¹² Tome 1951–1953, pages 543 and 554.

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7 & 8 Eliz. 2, c.46.	The Nuclear Installations (Licensing and Insurance) Act, 1959.	In section four, in sub-section (3), the words “or the Carriage by Air Act, 1932”.
* *	* *	* *

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CARRIAGE BY AIR (SUPPLEMENTARY PROVISIONS) ACT, 1962.

10 & 11 Eliz. 2 Ch. 43.

ARRANGEMENT OF SECTIONS.

Section

1. Supplementary Convention to have force of law.
2. Interpretation of Supplementary Convention.
3. Application of provisions of Acts of 1961 and 1932.
4. Interim protection for carriers' servants and agents.
5. Application to British possessions, etc., and to carriage by air not governed by Supplementary Convention.
6. Application to Crown.
7. Short title, commencement and saving.

Schedule –

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.



CHAPTER 43

AN ACT to give effect to 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 ; and for connected purposes.

[19th July, 1962].

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : ⁻¹³

SUPPLEMENTARY CONVENTION TO HAVE FORCE OF LAW

1.-(1) The provisions of 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, as set out in the Schedule to this Act, shall, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees, and other persons, and subject to the provisions of this Act, have the force of law in the United Kingdom in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

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

INTERPRETATION OF SUPPLEMENTARY CONVENTION

2.-(1) In the Schedule to this Act "the Warsaw Convention" means the Convention set out in the First Schedule to the Carriage by Air Act, 1961, but, in relation to rights or liabilities arising out of an occurrence before 1st June, 1967, "the Warsaw Convention" means the Convention set out in the First Schedule to the Carriage by Air Act, 1932.^{15]}

(2) In Articles VII and VIII in the Schedule to this Act "court" includes (in an arbitration allowed by the Conventions referred to in the foregoing subsection or by Article IX, 3 in the Schedule to this Act) an arbitrator.

* * * * *

APPLICATION OF PROVISIONS OF ACTS OF 1961 AND 1932

¹³ Deletions and words in square brackets indicate adaptations and modifications made by the Carriage by Air (Jersey) Order, 1967.

¹⁵ Tome VII, page 376.

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3.-(1) In paragraph (a) of subsection (1) and in subsections (2) and (3) of section four of the said Act of 1961 (which explain the limitations on liability in Article 22 in the First Schedule to that Act and enable a court to make appropriate orders and awards to give effect to those limitations) references to the said Article 22 shall include, subject to any necessary modifications, references to Article VI in the Schedule to this Act.

(2) In section five of the said Act of 1961 (which limits the time for bringing proceedings against a carrier's servant or agent and to obtain contribution from a carrier) references to a carrier include references to an actual carrier as defined in paragraph (c) of Article I in the Schedule to this Act as well as to a contracting carrier as defined in paragraph (b) of that Article.

(3) In section eight of the said Act of 1961 (which relates to actions against States brought in the United Kingdom in accordance with Article 28 in the First Schedule to that Act) and in section two of the said Act of 1932 (which contains corresponding provisions) the reference to Article 28 shall include a reference to Article VIII in the Schedule to this Act.

INTERIM PROTECTION FOR CARRIERS' SERVANTS AND AGENTS

4. Article V in the Schedule to this Act, and so much of Article VI in that Schedule as limits the aggregate amount which can be recovered from a carrier and his servants and agents, shall, in relation to rights or liabilities arising out of an occurrence before [1st June, 1967], apply not only in relation to carriage performed by an actual carrier and to the persons mentioned in those provisions but also in relation to any other carriage governed by the Convention set out in the First Schedule to the said Act of 1932 and to any carrier under that Convention and his servants and agents.

APPLICATION TO BRITISH POSSESSIONS, ETC., AND TO CARRIAGE BY AIR NOT GOVERNED BY SUPPLEMENTARY CONVENTION

5.-(1) Section nine of the said Act of 1961 (which enables Her Majesty to extend that Act to British possessions and other territories) shall (except so far as it relates to United Kingdom trust territories) apply to this Act as it applies to that Act, and an order under that section may relate to both that Act and this Act.

(2) Section ten of the said Act of 1961 (which enables Her Majesty to apply the First Schedule and other provisions of that Act to carriage by air which is not governed by the Convention set out in that Schedule) shall apply to the Schedule and other provisions of this Act as it applies to that Act, and an order under that section may relate to both that Act and this Act.

* * * * *

APPLICATION TO CROWN

6.-(1) This Act shall bind the Crown.

* * * * *

SHORT TITLE, COMMENCEMENT AND SAVING

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7.-(1) This Act may be cited as the Carriage by Air (Supplementary Provisions) Act, 1962.

[(2) This Act shall come into force on 1st June, 1967.]

(3) This Act shall not apply so as to affect rights or liabilities arising out of an occurrence before the day mentioned in the last foregoing subsection ; * * * * *.

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SCHEDULE

PART I

THE ENGLISH TEXT

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

ARTICLE I

In this Convention :

- (a) [*This paragraph is not reproduced. It defines “Warsaw Convention”.*]
- (b) “contracting carrier” means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor ;
- (c) “actual carries” 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

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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 seised 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

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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.

[Articles XI to XVIII and the concluding words of the Convention are not reproduced. They deal with the coming into force of the Convention and provide that in the case of inconsistency the text in French shall prevail.]

PART II

THE FRENCH TEXT

CONVENTION

COMPLEMENTAIRE A LA CONVENTION DE VARSOVIE, POUR
L'UNIFICATION DE CERTAINES REGLES RELATIVES AU TRANSPORT
AERIEN INTERNATIONAL EFFECTUEE PAR UNE PERSONNE AUTRE QUE LE
TRANSPORTEUR CONTRACTUEL

ARTICLE PREMIER

Dans la présente Convention :

(a) * * * *

(b) “transporteur contractuel” signifie une personne partie à un contrat de transport régi par la Convention de Varsovie et conclu avec un passager ou un expéditeur ou avec une personne agissant pour le compte du passager ou de l’expéditeur ;

(c) “transporteur de fait” signifie une personne, autre que le transporteur contractuel, qui, en vertu d’une autorisation donnée par le transporteur contractuel, effectue tout ou partie du transport prévu à l’alinéa (b) mais n’est pas, en ce qui concerne cette partie, un transporteur successif au sens de la Convention de Varsovie. Cette autorisation est présumée, sauf preuve contraire.

ARTICLE II

Sauf disposition contraire de la présente Convention, si un transporteur de fait effectue tout ou partie du transport qui, conformément au contrat visé à l'article premier, alinéa (b), est régi par la Convention de Varsovie, le transporteur contractuel et le transporteur de fait sont soumis aux règles de la Convention de Varsovie, le premier pour la totalité du transport envisagé dans le contrat, le second seulement pour le transport qu'il effectue.

ARTICLE III

1. Les actes et omissions du transporteur de fait ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur contractuel.

2. Les actes et omissions du transporteur contractuel ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur de fait. Toutefois, aucun de ces actes ou omissions ne pourra soumettre le transporteur de fait à une responsabilité dépassant les limites prévues à l'article 22 de la Convention de Varsovie. Aucun accord spécial aux termes duquel le transporteur contractuel assume des obligations que n'impose pas la Convention de Varsovie, aucune renonciation à des droits prévus par ladite Convention ou aucune déclaration spéciale d'intérêt à la livraison, visée à l'article 22 de ladite Convention, n'auront d'effet à l'égard du transporteur de fait, sauf consentement de ce dernier.

ARTICLE IV

Les ordres ou protestations à notifier au transporteur, en application de la Convention de Varsovie, ont le même effet qu'ils soient adressés au transporteur contractuel ou au transporteur de fait. Toutefois, les ordres visés à l'article 12 de la Convention de Varsovie n'ont d'effet que s'ils sont adressés au transporteur contractuel.

ARTICLE V

En ce qui concerne le transport effectué par le transporteur de fait, tout préposé de ce transporteur ou du transporteur contractuel, s'il prouve qu'il a agi dans l'exercice de ses fonctions, peut se prévaloir des limites de responsabilité applicables, en vertu de la présente Convention, au transporteur dont il est préposé, sauf s'il est prouvé qu'il a agi de telle façon que les limites de responsabilité ne puissent être invoquées aux termes de la Convention de Varsovie.

ARTICLE VI

En ce qui concerne le transport effectué par le transporteur de fait, le montant total de la réparation qui peut être obtenu de ce transporteur, du transporteur contractuel et de leurs préposés quand ils ont agi dans l'exercice de leurs fonctions, ne peut pas dépasser l'indemnité la plus élevée qui peut être mise à charge soit du transporteur contractuel, soit du transporteur de fait, en vertu de la présente Convention, sous réserve qu'aucune des personnes mentionnées dans le présent article ne puisse être tenue pour responsable au delà de la limite qui lui est applicable.

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ARTICLE VII

Toute action en responsabilité, relative au transport effectuée par le transporteur de fait, peut être intentée, au choix du demandeur, contre ce transporteur ou le transporteur contractuel ou contre l'un et l'autre, conjointement ou séparément. Si l'action est intentée contre l'un seulement de ces transporteurs, ledit transporteur aura le droit d'appeler l'autre transporteur en intervention devant le tribunal saisi, les effets de cette intervention ainsi que la procédure qui lui est applicable étant réglés par la loi de ce tribunal.

ARTICLE VIII

Toute action en responsabilité, prévue à l'article VII de la présente Convention, doit être portée, au choix du demandeur, soit devant l'un des tribunaux où une action peut être intentée au transporteur contractuel, conformément à l'article 28 de la Convention de Varsovie, soit devant le tribunal du domicile du transporteur de fait ou du siège principal de son exploitation.

ARTICLE IX

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

2. En ce qui concerne le transport effectué par le transporteur de fait, le paragraphe précédent ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.

3. Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article VIII

ARTICLE X

Sous réserve de l'article VII, aucune disposition de la présente Convention ne peut être interprétée comme affectant les droits et obligations existant entre les deux transporteurs.