

CIVIL AVIATION AMENDMENT BILL

AS REPORTED FROM THE TRANSPORT AND ENVIRONMENT
COMMITTEE

COMMENTARY

Recommendation

The Transport and Environment Committee has examined the Civil Aviation Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Civil Aviation Amendment Bill was referred to the Transport and Environment Committee on 8 December 1998. The closing date for submissions was 11 February 1999. We received and considered six submissions from interested groups and individuals. We heard three submissions orally. Consideration of the bill took a total of three hours and 13 minutes, including one hour and 21 minutes spent hearing evidence.

We received advice from the Ministry of Transport and the Civil Aviation Authority. A report on the bill was also received from the Regulations Review Committee.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Introduction

Aims of the bill

The bill relates to two main issues: it allows New Zealand to accede to three Montreal Protocols which amend the 1929 Warsaw Convention relating to International Carriage by Air, and enables the organisers of the 1999/2000 America's Cup regatta to allocate airspace above the race area through a process of accreditation.

Warsaw Convention relating to International Carriage by Air

The 1929 Warsaw Convention is an international multilateral treaty which provides for airline liability in the case of death or injury to passengers, and loss or damage to baggage or cargo. While the Convention was made in 1929, it has been amended a number of times since then. Such amendments include the three protocols implemented through this bill.

Outdated currency unit for airline liability to change

Under the Warsaw Convention, the limits of liability for death or injury to passengers or loss or damage to baggage or cargo are currently expressed in Poincare Gold Francs. This is an outdated international currency unit, and equivalent units in New Zealand currency have to be amended and fixed by notice in the *New Zealand Gazette*, signed by the Minister of Finance.

Part 1 provides for the implementation of Montreal Protocol Nos 1, 2 and 4 to the Warsaw Convention relating to International Carriage by Air. These protocols change the currency unit for the expression of liability limits from Poincare Gold Francs to "special drawing rights" (SDRs) of the International Monetary Fund, as well as simplifying the formalities relating to air waybills.

The bill enables the Secretary to the Treasury to provide a certificate fixing the value for New Zealand dollars in SDRs on the relevant date. The change to the currency unit will enable a more efficient adjustment of liability limits to movements in the value of the New Zealand dollar.

Formalities relating to air waybills

Part 1 of the bill also simplifies the formalities relating to air waybills. By implementing Montreal Protocol No. 4, difficulties which have been caused in practice by the detailed requirements of the current legislation would be addressed. It would also enable the use of electronic waybills, which would result in compliance cost savings in terms of reduced paperwork and allow for the more expeditious processing of consignments.

Airspace over America's Cup races to be controlled

The 1999/2000 America's Cup regatta is a important event for New Zealand and, while similar events have been held here, they have not been on such a large scale. It is anticipated that there will be extensive media interest and coverage for the event from both New Zealand and overseas. In planning to accommodate the numbers of aircraft that it is estimated will wish to view racing from the air, the concern was raised that current legislation would not be sufficient to enable access to airspace to be controlled to the extent that will be necessary.

Part 2 allows the organisers of the America's Cup regatta to control access to the airspace above race venues using a system of accreditation. An event organiser will be appointed by the Minister of Transport after submitting a proposed accreditation system, which must comply with criteria outlined in clause 11.

Warsaw Convention and Montreal Protocol Nos 1, 2 and 4

Accession long overdue

The majority of submissions approved of the provisions that will allow New Zealand to accede to the Montreal Protocols which amend the Warsaw Convention concerning carriage by air. It took over 20 years for the protocols to be brought into force internationally and the consensus appears to be that such provisions are long overdue. Although the bill will be a good step towards updating the liability regime for international civil aviation, further provision is

needed to improve this regime. With this in mind a diplomatic conference has been called for May 1999 to modernise and consolidate the Warsaw Convention. Despite this initiative, however, the resolution of these issues is likely to take some time.

Carriage by Air Act 1967

We received two submissions from persons recommending that Part 1 be inserted into the Carriage by Air Act 1967, rather than the Civil Aviation Act 1990. They consider it undesirable and confusing for international law and New Zealand domestic law relating to air carrier liability to be located in different statutes.

One of these submissioners also maintained that it is inappropriate for “private law” matters such as the means for carriers, passengers, and cargo shippers to resolve liability issues to be inserted into the Civil Aviation Act 1990, which is concerned with “public law” matters. It was suggested that there be separate legislation dealing with all issues relating to carrier liability.

We were advised by officials that placing the carrier liability provisions in the Civil Aviation Act 1990 will contribute to the consolidation of the law relating to civil aviation into that Act. The Ministry of Transport anticipates that, in addition to the international aspects of carriage by air, the Civil Aviation Act 1990 will eventually include the domestic aspects of carriage by air also. We can see the advantage of incorporating all the relevant provisions relating to civil aviation into one piece of legislation, and will follow further progress in this area with interest.

Reduction in paperwork and compliance costs

As introduced, the bill gives force of law to Montreal Protocol No. 4, which includes provisions relating to air cargo documentation requirements. Article 5 of the Warsaw Convention, as amended by this protocol, provides that “any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill.” This provision will allow carriers to use electronic forms of documentation for air cargo. While this could occur under current law, the carriers would not necessarily have the protection of the Warsaw Convention’s liability provisions.

Submissioners welcomed the ability to use electronic air waybills, which will significantly reduce paperwork and, consequently, compliance costs. They considered that the provision will enhance the ability of New Zealand exporters to remain competitive.

Control of airspace during the America’s Cup regatta

Concern regarding possible precedent of charging for airspace

As outlined above, Part 2 allows the organisers of the America’s Cup regatta to control access to the airspace above race venues using a system of accreditation.

The Auckland Airspace Users Group (AAUG) was concerned that, by allowing the event organiser the discretion to decide who may enter the designated airspace over the regatta venue and permitting the event organiser to charge for entry into that designated airspace, the bill establishes a dangerous precedent. The AAUG is of the view that airspace belongs to everyone and therefore we all have a fundamental right to use it. The ability to charge for access to airspace may diminish that perceived right.

The concern centres on the precedent that the ability to charge for airspace access under this bill may set for future events and other commercially oriented entities who may view the opportunity to control airspace access as a means of generating revenue. We were told that this anxiety persists even though the bill is

specific to the America's Cup regatta, has a specific commencement date and a sunset clause which provides for its expiry on 30 June 2000. The submissioner also maintains that aviation safety and the public interest can be adequately assured and protected under Part 73 of the Civil Aviation Rules (Part 73).

Officials informed us of a Crown Law Office opinion that, under existing civil aviation legislation, there may be some uncertainty as to whether access to airspace could be managed by the event organiser under current Part 73, to the extent required for the regatta. They believe that such uncertainty could result in difficulties prior to and during the America's Cup competition.

We are concerned that the bill should not be seen as a precedent for charging for access to airspace in the future and emphasize that the sunset clause reinforces that intention. However, it does appear that current provisions, such as Part 73, are not sufficient to manage airspace during such an event, and this bill is intended to provide the certainty needed to ensure a successful regatta.

Assessing the value of airspace

As introduced, clause 14 (d) requires applications for appointment as the event organiser to include "an assessment by the applicant of the value of the right to control access to the proposed airspace".

Submissions suggested that this paragraph should be omitted from clause 14, as it requires information that is unrelated to safety and could be used in the future to charge for access to airspace. Any move to put a value on airspace would be vigorously opposed by the aviation industry.

We were advised that clause 14 (d) was included in the bill to obtain an assessment of the value of the benefit of entering into the restricted airspace. Officials considered that such an assessment could assist in allocating a similar benefit in the future. Officials also advised that paragraph (d) could be omitted without affecting the other provisions of the bill.

We are concerned that the accreditation process be transparent. We cannot see how a provision such as proposed clause 14 (d) could contribute to a transparent cost recovery regime. Therefore, we do not consider that clause 14 (d), as introduced, is necessary and we recommend that it be omitted from the bill.

We do recommend that a new paragraph (d) be substituted, however, which requires applicants to submit an assessment of the costs that are to be recovered under clause 11(3). We believe that this will increase the transparency of the cost recovery process. The proposed new paragraph is not related to the previous paragraph (d), concerning the value of the right to control access to airspace, which is to be omitted.

Cost recovery

Clause 11 (3) provides that any fee or charge imposed by the event organiser for entry into the designated airspace must bear a proper relation to the cost to the event organiser in developing and administering the accreditation system controlling entry to the designated airspace. Submissions maintained that such cost recovery by the event organiser must be a transparent process.

We agree that the costs charged by the event organiser should be based on cost recovery only, but think that the bill should go further to provide transparency in the determination of fees and charges imposed by the event organiser. We believe a disclosure provision which requires the event organiser to provide information on costs to be recovered will provide a more open process.

Recommendation that information on cost recovery be released upon request

We recommend a new clause be inserted to ensure that information on cost recovery by the event organiser is required to be disclosed to interested parties. Under new clause 11A, the event organiser must, if requested by the Minister, provide information regarding the recovery of costs by the event organiser. While information that is obtained in such a way by the Minister must be made available to any person who requests it, we note that this will depend on the Minister having requested that information in the first instance.

General provisions

Submissioners expressed concern that the provisions in Part 2 are very general and do not provide any specific criteria on the following:

- what criteria would be used by the Director of Civil Aviation in deciding whether to specify the person nominated as the controlling authority;
- who would check and approve the accreditation system; and
- what criteria would be used by the Director to decide on how large the designated airspace will be.

These concerns appear to be addressed by existing provisions in Part 73, and clauses 11 to 15 of the bill. Part 73 enables the Director of Civil Aviation to designate an area of airspace as a restricted area. In addition, the Director may specify a controlling authority for the restricted areas and impose conditions under which aircraft may be permitted to fly within those areas, and under which the controlling authority shall operate. The restricted areas are required under Part 73 to be as small as practicable.

The procedure for the accreditation system is provided for in clauses 11 to 15 of the bill. An application to be the event organiser requires a number of details regarding the applicant's proposed accreditation system, and includes those contained in clause 11.

Issue of noise for local residents

We were concerned that noise from aircraft flying to and from the restricted areas would have some negative impact on local residents on the North Shore near the race venues, and asked whether this was an issue that had been considered by officials. We were reassured that, as racing is not to be every day, and races are programmed during the middle of the day, noise from the aircraft should not significantly inconvenience local residents.

Report from the Regulations Review Committee

French text prevails

The Regulations Review Committee made a report on 1 March 1999 under Standing Order 196(3). The report focused on the empowering provision which is contained in clause 3 and provides for the international treaties concerning carriage by air that are set out in the schedule to be updated by Order in Council. The Regulations Review Committee was not concerned with the empowering provision itself, but with the text of the treaties set out in the schedule.

The French language is specified in the treaties to be the prevailing language, however the treaties only appear in English in the schedule of the bill. In the event of inconsistency between the English and French texts of the treaties, the French text would prevail, under new section 91D. The Regulations Review Committee recommended that the French language text of the treaties also be included in the schedule of the bill.

It was argued that, if the reference to the French text were to be removed from the bill, it would not be necessary to include the French text at all. However, the report of the Regulations Review Committee suggested that if the reference remained it would be necessary either to include the French text or to indicate which French text is the version that prevails. In response, officials advised us that the equivalent Australian legislation includes a clause which provides for the certification of an authentic French text that could be used if any issues of interpretation arose.

Recommendation to include certification of prevailing French text

We believe it is important to keep the original reference to the prevalence of the French text of the treaties. Rather than appending the full French text to the bill, we suggest a similar approach to that set out in equivalent Australian legislation. Accordingly, we recommend that a provision be included for the Secretary of Foreign Affairs and Trade to certify an authentic French text of the treaties.

Officials have informed us that when the Warsaw Convention is revised, the intention is that texts in at least four languages (including English) will be negotiated, each of which will be of equal standing. We endorse this approach.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

CIVIL AVIATION AMENDMENT

ANALYSIS

- Title
1. Short Title and commencement

PART 1

AMENDMENTS TO PRINCIPAL ACT

2. Commencement
3. New Part 9A inserted

PART 9A

INTERNATIONAL CARRIAGE BY AIR

- 91A. Interpretation
91B. Application of Guadalajara Convention
91C. Conventions to have force of law
91D. Inconsistency between French and English texts
91E. Fatal accidents
91F. Contributory negligence
91G. Limitation of liability
91H. Value of special drawing right
91I. Time for bringing proceedings
91J. Actions against High Contracting Parties
91K. Designation of Parties
91L. Article 40A of amended Convention
91M. Power to exclude aircraft in use for military purposes

Transitional Provisions

- 91N. Occurrences before commencement of this Part
91O. High Contracting Parties not Party to Hague Protocol
91P. High Contracting Parties not Party to Montreal Protocols
91Q. High Contracting Parties not Party to Protocol No. 4

- 91R. High Contracting Parties not Party to Protocol No. 2
91S. Currency equivalent notices
91T. Regulations

4. New Schedules inserted
5. Repeals

PART 2

1999–2000 AMERICA'S CUP REGATTA

6. Commencement
7. Expiry of this Part
8. Purpose of this Part
9. Interpretation

Functions of Event Organiser

10. Event organiser may determine who can enter designated airspace
11. Accreditation system
11A. Disclosure of costs of event organiser

Appointment of Event Organiser

12. Minister may appoint event organiser
13. Minister may cancel appointment of event organiser
14. Applications for appointment as event organiser

Controlling Authority

15. Event organiser's contract with nominated controlling authority
16. Controlling authority may act in accordance with contract

SCHEDULE

- New Schedules 4 and 5 Added to Principal Act

A BILL INTITULED

An Act to—

- (a) Amend the Civil Aviation Act 1990 to enable the implementation of certain Protocols to the Warsaw Convention relating to International Carriage by Air; and 5
- (b) Provide for a system for controlling entry to airspace above the 1999–2000 America’s Cup regatta

BE IT ENACTED by the Parliament of New Zealand as follows: 10

1. Short Title and commencement—(1) This Act may be cited as the Civil Aviation Amendment Act 1998, and is part of the Civil Aviation Act 1990* (“the principal Act”).

(2) Except as provided in **section 2** and **section 6**, this Act comes into force on the day after the date on which it receives the Royal assent. 15

*R.S. Vol. 32, p. 1
Amendment: 1996, No. 91

PART 1

AMENDMENTS TO PRINCIPAL ACT

2. Commencement—This Part and the Schedule come into force on a date to be appointed by the Governor-General by Order in Council. 20

3. New Part 9A inserted—The principal Act is amended by inserting, after Part IX, the following Part:

“PART 9A

“INTERNATIONAL CARRIAGE BY AIR 25

“91A. **Interpretation—**In this Part, unless the context otherwise requires,—

“‘Additional Protocol No. 1’ means Additional Protocol No. 1 to amend the Warsaw Convention which was opened for signature at Montreal on 25 September 1975: 30

“‘Additional Protocol No. 2’ means Additional Protocol No. 2 to amend the Warsaw Convention and the Hague Protocol which was opened for signature at Montreal on 25 September 1975: 35

“‘The amended Convention’ means the Convention, the English text of which is set out in **Schedule 4**, being the

Warsaw Convention as amended by the following protocols:

“(a) The Hague Protocol:

5 “(b) Additional Protocols Nos 1 and 2, and Protocol 4:

“ ‘Court’, in relation to an arbitration allowed by the amended Convention or the Guadalajara Convention, includes an arbitrator:

10 “ ‘The Guadalajara Convention’ means the Convention, the English text of which is set out in **Schedule 5**, being a 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, which
15 opened for signature at Guadalajara on 18 September 1961:

“ ‘The Hague Protocol’ means the Protocol opened for signature at the Hague on 28 September 1955:

20 “ ‘High Contracting Party’ has the same meaning as in Article 40A of the amended Convention:

“ ‘Protocol No. 4’ means Protocol No. 4 to amend the Warsaw Convention and the Hague Protocol which was opened for signature at Montreal on
25 25 September 1975:

“ ‘The Warsaw Convention’ means the Convention for the unification of certain rules relating to international carriage by air, which opened for signature at Warsaw on 12 October 1929; and includes the Additional Protocol to that Convention.

30 Cf. 1967, No. 151, s. 5; 1990, No. 102, s. 2

“**91B. Application of Guadalajara Convention**—In this Part, references to the amended Convention or to any Article of that Convention are, where applicable and subject to any necessary modifications, to be read as references to that
35 Convention or Article as supplemented by the Guadalajara Convention.

Cf. 1967, No. 151, s. 6

40 “**91C. Conventions to have force of law**—(1) The provisions of the amended Convention and the Guadalajara Convention have the force of law in New Zealand in relation to any carriage by air to which the amended Convention or the Guadalajara Convention, as the case may require, applies.

“(2) Despite **subsection (1)**, the provisions of the amended Convention and the Guadalajara Convention have the force of

law in New Zealand only in so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees, and other persons.

“(3) The provisions of the amended Convention and the Guadalajara Convention apply in New Zealand in accordance with **subsection (1)**, irrespective of the nationality of the aircraft performing that carriage. 5

“(4) The provisions of the amended Convention and the Guadalajara Convention apply in New Zealand subject to the provisions of this Part. 10

“(5) Each version of Article 22 set out in **Schedule 4** applies in the circumstances outlined in the heading of that version.

Cf. 1967, No. 151, s. 7 (1)

“91D. **Inconsistency between French and English texts**—(1) If there is any inconsistency between the English text of the amended Convention which is set out in **Schedule 4** and the corresponding text in French, the text in French prevails. 15

“(2) If there is any inconsistency between the English text of the Guadalajara Convention which is set out in **Schedule 5** and the corresponding text in French, the text in French prevails. 20

New (Unanimous)

“(3) A certificate may be given by or on behalf of the Secretary of Foreign Affairs and Trade stating that a document to which the certificate is annexed is a true copy of the authentic text in the French language of 1 or more of the following: 25

“(a) Additional Protocol No. 1:

“(b) Additional Protocol No. 2:

“(c) The Guadalajara Convention: 30

“(d) The Hague Protocol:

“(e) Protocol No. 4:

“(f) The Warsaw Convention.

“(4) Any certificate given under **subsection (3)** must be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the matters stated in the certificate. 35

Cf. 1967, No. 151, s. 7 (2)

“91E. **Fatal accidents**—References in section 4 of the Deaths by Accident Compensation Act 1952 to a wrongful act, neglect, or default, include references to any occurrence which 40

gives rise to a liability under Article 17 of the amended Convention.

Cf. 1967, No. 151, s. 9

5 “91F. **Contributory negligence**—For the purposes of Article 21 of the amended Convention, the provisions of the Contributory Negligence Act 1947 are the provisions of the law of New Zealand under which a court may exonerate the carrier wholly or partly from the carrier’s liability.

Cf. 1967, No. 151, s. 12

10 “91G. **Limitation of liability**—(1) The limitations on liability referred to in Article 22 of the amended Convention apply whatever the nature of the proceedings by which liability may be enforced and, in particular,—

15 “(a) Those limitations apply where proceedings are brought by a tortfeasor to obtain contribution from another tortfeasor if the tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier; and

20 “(b) The limitation for each passenger referred to in paragraph (1) of Article 22 applies to the aggregate liability of the carrier in all proceedings which may be brought against the carrier under the law of New Zealand, together with any proceedings brought against the carrier outside New Zealand.

25 “(2) A court before which proceedings are brought to enforce a liability which is limited by Article 22 of the amended Convention may at any stage of the proceedings make any order that appears to the Court to be just and equitable, in view of—

30 “(a) The provisions of Article 22; and

“(b) Any other proceedings which have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.

35 “(3) A court before which proceedings are brought to enforce a liability which is limited by Article 22 of the amended Convention has jurisdiction, where the liability is, or may be, partly enforceable in other proceedings in New Zealand or elsewhere, to—

40 “(a) Award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court; or

“(b) Make any part of its award conditional on the result of any other proceedings.

“(4) The provisions of **subsection (3)** do not limit the powers conferred on a court by **subsection (2)**.

“(5) Unless the context otherwise requires, references in this section to Article 22 are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention. 5

Cf. 1967, No. 151, s. 10 (1), (2), (3), (5)

“91H. **Value of special drawing right**—(1) For the purposes of Article 22 of the amended Convention, the value of 1 special drawing right must be treated as equal to such a sum in New Zealand currency as is fixed by the International Monetary Fund as being the equivalent of 1 special drawing right for— 10

“(a) The date of judgment; or 15

“(b) Any other relevant date; or

“(c) If no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

“(2) For the purposes of **subsection (1)**, a certificate may be given by or on behalf of the Secretary to the Treasury stating that— 20

“(a) A particular sum in New Zealand currency has been fixed as the equivalent of 1 special drawing right for a particular date; or

“(b) No sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date. 25

“(3) Any certificate given under **subsection (2)** must be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the value of 1 special drawing right in terms of the New Zealand currency for the purposes of **subsection (1)**. 30

“(4) Unless the context otherwise requires, references in this section to Article 22 are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention. 35

Cf. 1967, No. 151, s. 10 (4), (4A), (5); 1990, No. 102, s. 4

“91I. **Time for bringing proceedings**—(1) No action against a carrier’s servant or agent, which arises out of damage to which this Part relates, may be brought after more than 2 years if the servant or agent was acting within the scope of that person’s employment. 40

“(2) For the purposes of **subsection (1)**, the period of 2 years is calculated from the earliest of the following dates:

“(a) The date of arrival at the destination:

“(b) The date the aircraft ought to have arrived:

5 “(c) The date carriage stopped.

“(3) Article 29 of the amended Convention does not apply to any proceedings for contribution between tortfeasors.

10 “(4) Despite **subsection (3)**, no action may be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which Article 29 applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

Struck Out (Unanimous)

15 “(5) **Subsections (1) to (4)** and the provisions of Article 29 have effect as if references in those provisions to an action included references to an arbitration, and section 29 (3) and (4) of the Limitation Act 1950 (which determines the time at which an arbitration is deemed to have commenced) applies for the purpose of this subsection.

20 *New (Unanimous)*

25 “(5) **Subsections (1) to (4)** and the provisions of Article 29 have effect as if references in those provisions to an action included references to an arbitration, and Article 21 of the First Schedule of the Arbitration Act 1996 and section 29 (2) to (4) of the Limitation Act 1950 (which determine the time at which an arbitration is deemed to have commenced) apply for the purposes of this subsection.

Cf. 1967, No. 151, s. 11

30 “91J. **Actions against High Contracting Parties**—
(1) Every High Contracting Party to the amended Convention is to be regarded as having submitted to the jurisdiction of the Court in the circumstances described in **subsection (2)**.

35 “(2) **Subsection (1)** applies where any action is brought in a court in New Zealand by a High Contracting Party in accordance with the provisions of Article 28 of the amended Convention or Article VIII of the Guadalajara Convention to enforce a claim in respect of carriage undertaken by that Party.

“(3) Rules of Court may provide for the manner in which any action to which **subsection (1)** applies is to be commenced and carried on.

“(4) Nothing in this section authorises the issue of execution against the property of any High Contracting Party. 5

“(5) **Subsection (1)** does not apply to any High Contracting Party to the amended Convention which has availed itself of the provisions of the Additional Protocol, which appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in **Schedule 4**. 10

Cf. 1967, No. 151, s. 14

“91K. **Designation of Parties**—(1) The Governor-General may from time to time, by Order in Council, certify—

“(a) The identity of— 15

“(i) The High Contracting Parties to the amended Convention; or

“(ii) The Parties to the Guadalajara Convention; or

“(iii) The Parties to the Hague Protocol; or

“(iv) The Parties to Additional Protocol No. 1; or 20

“(v) The Parties to Additional Protocol No. 2; or

“(vi) The Parties to Protocol No. 4; or

“(vii) The High Contracting Parties to the Warsaw Convention; or

“(b) The territories in respect of which the parties referred to in **paragraph (a) (i), (ii), (iii), (iv), (v), (vi), or (vii)** are respectively parties; or 25

“(c) To what extent the parties referred to in **paragraph (a) (i), (ii), (iii), (iv), (v), (vi), or (vii)** have availed themselves of the Additional Protocol, which appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in **Schedule 4**. 30

“(2) An Order in Council under this section is, except in so far as it has been superseded by a subsequent order, sufficient evidence of the matters so certified. 35

“(3) An Order in Council under this section may contain such transitional and other consequential provisions as the Governor-General considers to be desirable.

“(4) An Order in Council under this section certifying who are the High Contracting Parties to the amended Convention, or the Parties to the Guadalajara Convention, or the Parties to the Hague Convention, or the Parties to Additional Protocol No. 1, or No. 2, or to Protocol No. 4, or the High Contracting 40

Parties to the Warsaw Convention, must specify the date on and from which any such Party became or ceased to be a Party.

Cf. 1967, No. 151, s 8 (1), (3), (4), (5)

5 “**91L. Article 40A of amended Convention—**
(1) Paragraph (2) of Article 40A of the amended Convention does not extend references in the amended Convention to the territory of a High Contracting Party to include any territory in respect of which that High Contracting Party is not a Party.

10 “(2) **Subsection (1)** does not apply to references in the amended Convention to the territory of any State, whether a High Contracting Party or not.

Cf. 1967, No. 151, s. 8 (2)

15 “**91M. Power to exclude aircraft in use for military purposes—**(1) The Governor-General may from time to time, by Order in Council, direct that **subsection (2)** applies or ceases to apply to New Zealand or any other State specified in the order.

20 “(2) The amended Convention does not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this subsection applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

Cf. 1967, No. 151, s. 13

“Transitional Provisions

25 “**91N. Occurrences before commencement of this Part—**This Part does not apply so as to affect rights or liabilities arising out of an occurrence before the commencement of this Part.

Cf. 1967, No. 151, s. 15 (1)

30 “**91O. High Contracting Parties not Party to Hague Protocol—**(1) **Subsection (2)** applies where, by reason of the fact that any High Contracting Party to the Warsaw Convention is not a Party to the Hague Protocol, the amended Convention is not applicable to any carriage by air.

35 “(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the Carriage by Air Act 1940 (as it read immediately before its repeal) had continued in force.

40 “(3) Despite **subsection (2)**, if the Guadalajara Convention applies to carriage by air where that subsection applies, the applicable law includes the provisions of that Convention which have the force of law in New Zealand under **section 91c**.

“(4) For the purposes of **subsections (2) and (3)**, section 3 of the Carriage by Air Act 1940 applies as if the reference to the provisions of Article 28 of the Warsaw Convention included a reference to Article VIII of the Guadalajara Convention.

“(5) Despite **subsection (2)**, if Additional Protocol No. 1 applies to carriage by air where that subsection applies, the applicable law includes— 5

“(a) The provisions of Article 22 of the (*amended*) Warsaw Convention as substituted by Additional Protocol No. 1; and 10

“(b) The provisions of section 91H of this Act.

Cf. 1967, No. 151, s. 15 (2), (3)

“**91P. High Contracting Parties not Party to Montreal Protocols**—(1) **Subsection (2)** applies where, by reason of the fact that any High Contracting Party or Party, as the case may be, to the Warsaw Convention and the Hague Protocol is not a Party to any of Additional Protocols Nos. 1 and 2 and Protocol No. 4, the amended Convention is not applicable to any carriage by air. 15

“(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if Part 1 and the First and Second Schedules of the Carriage by Air Act 1967 (as they read immediately before their repeal) had continued in force. 20

“**91Q. High Contracting Parties not Party to Protocol No. 4**—(1) **Subsection (2)** applies where, by reason of the fact that any High Contracting Party or Party, as the case may be, to the Warsaw Convention and the Hague Protocol is a Party to Additional Protocol No. 2 but not Protocol No. 4, Protocol No. 4 is not applicable to any carriage by air. 25 30

“(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No. 4.

“**91R. High Contracting Parties not Party to Protocol No. 2**—(1) **Subsection (2)** applies where, by reason of the fact that any High Contracting Party or Party, as the case may be, to the Warsaw Convention and the Hague Protocol is a Party to Protocol No. 4 but not Additional Protocol No. 2, Additional Protocol No. 2 is not applicable to any carriage by air. 35 40

“(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if

the amended Convention had not included the amendments inserted by Protocol No. 2.

5 “91s. **Currency equivalent notices**—(1) The Minister of Finance may from time to time, by notice in the *Gazette*, specify the respective amounts which for the purpose of Article 22 of the Warsaw Convention (as amended by the Hague Protocol and as set out in the First Schedule of the Carriage by Air Act 1967), and in particular of paragraph 5 of that Article, are to be taken as equivalent to the sums expressed in francs which are
10 mentioned in that Article.

“(2) The Carriage by Air (New Zealand Currency Equivalents) Notice (No. 2) 1998 (S.R. 1998/347) continues in force as if it had been made under **subsection (1)** until replaced under that subsection.

15 Cf. 1967, No. 151, s. 10 (4)

“91T. **Regulations**—(1) The Governor-General may from time to time, by Order in Council,—

20 “(a) Amend **Schedule 4** by making such amendments to the text of the amended Convention set out in that schedule as are required to bring that text up to date:

“(b) Revoke **Schedule 4**, and substitute a new schedule setting out in an up-to-date form the text of the amended Convention:

25 “(c) Amend **Schedule 5** by making such amendments to the text of the Guadalajara Convention set out in that schedule as are required to bring that text up to date:

30 “(d) Revoke **Schedule 5**, and substitute a new schedule setting out in an up-to-date form the text of the Guadalajara Convention.

“(2) Any order made under **subsection (1)** is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

35 “(3) The Governor-General may from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part and for its due administration.”

40 **4. New Schedules inserted**—The principal Act is amended by adding the **Schedules 4 and 5** set out in the Schedule.

5. Repeals—The following enactments are repealed:

- (a) Part I and the First and Second Schedules of the Carriage by Air Act 1967:
- (b) The Carriage by Air Amendment Act 1990:
- (c) The Carriage by Air Amendment Act (No. 2) 1990.

PART 2

5

1999–2000 AMERICA’S CUP REGATTA

6. Commencement—This Part comes into force on **1 July 1999**.

7. Expiry of this Part—This Part expires on the close of 30 June 2000. 10

8. Purpose of this Part—The purpose of this Part is to make provision for the accrediting of persons permitted to enter airspace for purposes connected with the 1999–2000 America’s Cup regatta.

9. Interpretation—In this Part, unless the context otherwise requires,— 15

“Civil Aviation Rules” or “rules” means the ordinary rules made under Part III of the principal Act:

“Controlling authority” means the controlling authority responsible for controlling entry to and operation of aircraft within the designated airspace, as specified by the Director under the Civil Aviation Rules: 20

“Designated airspace” means the areas of airspace designated by the Director under the rules as restricted areas for purposes connected with the regatta, including the airspace above— 25

(a) The area in which the regatta is conducted; and

(b) The transit area between the Viaduct Basin and the area in which the regatta is conducted:

“Event organiser” means the person or persons appointed by the Minister under **section 12** to develop and administer an accreditation system in relation to access to the designated airspace: 30

“Nominated controlling authority”, in relation to a person’s application for appointment as an event organiser, means the person nominated by the applicant to be specified by the Director as the controlling authority applicable to the proposed airspace: 35

“Proposed airspace”, in relation to a person’s application for appointment as an event organiser, means the 40

areas of airspace proposed by the applicant to be designated by the Director as restricted areas for purposes connected with the regatta:

“Regatta”—

- 5 (a) Means the yachting regatta known as the America’s Cup which is to take place in the years 1999 and 2000; and
- (b) Includes any preceding Challenger Selection Series.

10 *Functions of Event Organiser*

10. Event organiser may determine who can enter designated airspace—An event organiser may, in accordance with the accreditation system developed and administered by the event organiser under this Part, determine which persons
15 and organisations may enter the designated airspace.

11. Accreditation system—(1) An event organiser must develop and administer an accreditation system.

(2) The accreditation system must provide for all of the following matters:

- 20 (a) Accreditation by the event organiser of any person or organisation permitted to enter the designated airspace:
- (b) Imposition by the event organiser of terms and conditions, subject to any terms and conditions
25 imposed by the Director under the rules, in respect of—
 - (i) The accreditation of a person or organisation:
 - (ii) Entry to and operation within the designated airspace by an accredited person or organisation:
- 30 (c) Imposition by the event organiser of fees and charges payable by an accredited person or organisation in respect of entry to the designated airspace:
- (d) Enforcement of any terms and conditions imposed by the event organiser under **paragraph (b)**.
- 35 (3) Any fee or charge imposed by the event organiser under **subsection (2) (c)** must bear a proper relation to the cost to the event organiser of—
 - (a) Developing and administering the accreditation system; and
 - 40 (b) Administering any terms and conditions imposed under **subsection (2) (b)**.

(4) The accreditation system must not provide for payment of a fee or charge in respect of the accreditation of a person or organisation.

New (Unanimous)

11A. Disclosure of costs of event organiser—(1) An event organiser must, whenever so requested by the Minister, disclose to the Minister the costs of the type specified in **section 11 (3)** that have been incurred by the event organiser. 5

(2) Despite anything in the Official Information Act 1982, the Minister must, whenever so requested by any person, disclose to that person any information obtained under **subsection (1)**. 10

Appointment of Event Organiser

12. Minister may appoint event organiser—(1) The Minister may, by notice in the *Gazette*, appoint any person or persons to be an event organiser. 15

(2) The Minister may make an appointment under **subsection (1)** only if—

(a) The applicant has submitted an application in accordance with **section 14**; and

(b) The Minister is satisfied that— 20

(i) The proposed airspace is or is likely to be designated under the rules as a restricted area and the applicant's nominated controlling authority is or is likely to be the controlling authority applicable to the proposed airspace; and 25

(ii) The applicant is responsible for the management of any part of the regatta; and

(iii) The appointment will contribute to the effective management of any part of the regatta.

13. Minister may cancel appointment of event organiser— 30

Struck Out (Unanimous)

(1) The Minister may, by notice in the *Gazette*, cancel an appointment made under **section 12** if the Minister is no longer satisfied that any of the requirements set out in **section 12 (2) (b)** are still being met in that case. 35

New (Unanimous)

(1) The Minister may, by notice in the *Gazette*, cancel an appointment made under **section 12** if—

- 5 (a) The Minister is no longer satisfied that any of the requirements set out in **section 12 (2) (b)** are still being met in that case; or
- 10 (b) The Minister is satisfied, on the basis of information obtained under **section 11A**, that fees and charges imposed on accredited persons or organisations by the event organiser do not bear a proper relation to the costs of the type specified in **section 11 (3)** that have been incurred by the event organiser.

(2) If the appointment of the event organiser is cancelled or, if there is more than 1 event organiser, the appointment of every event organiser is cancelled,—

- 15 (a) The Director must remove the controlling authority applicable to the designated airspace; and
- (b) The Minister may appoint 1 or more new event organisers under **section 12**.

20 **14. Applications for appointment as event organiser—**
An application by a person to the Minister for appointment as an event organiser must include, or be accompanied by,—

- (a) Details of the applicant's proposed accreditation system, including the matters specified in **section 11**; and
- 25 (b) A copy of the contract between the applicant and the applicant's nominated controlling authority that complies with the requirements set out in **section 15**; and
- 30 (c) An indication that the proposed airspace is or is likely to be designated under the rules as a restricted area and that the applicant's nominated controlling authority is or is likely to be the controlling authority applicable to the proposed airspace; and

Struck Out (Unanimous)

- 35 (d) An assessment by the applicant of the value of the right to control access to the proposed airspace.

New (Unanimous)

- (d) An assessment by the applicant of his or her anticipated costs of the type specified in **section 11 (3)**.

Controlling Authority

15. Event organiser's contract with nominated controlling authority—(1) An applicant for appointment as an event organiser must, before submitting an application to the Minister, enter into a binding contract with the applicant's nominated controlling authority. 5

(2) The contract may be conditional only upon all or any of the following: 10

(a) Appointment of the applicant as an event organiser:

(b) Designation of the proposed airspace as a restricted area under the rules:

(c) Specification of the applicant's nominated controlling authority as the controlling authority applicable to the proposed airspace. 15

(3) The contract must—

(a) Provide that the controlling authority is responsible for ensuring that— 20

(i) Only those persons and organisations accredited by the event organiser enter the designated airspace; and

(ii) Pilots operating in the designated airspace do so in accordance with any conditions imposed by the Director under the rules and, subject to those conditions, any terms or conditions imposed by the event organiser; and 25

(b) Specify any fees or charges payable by the event organiser to the controlling authority. 30

(4) When the conditions specified in **subsection (2)** (if applicable) are satisfied, the contract is valid for the purposes of this Act.

16. Controlling authority may act in accordance with contract—Subject to any conditions imposed by the Director under the rules under which the controlling authority must operate, the controlling authority may act in accordance with the contract between itself and an event organiser referred to in **section 15**. 35

SCHEDULE

Section 4

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT

SCHEDULE 4

Section 91A

THE WARSAW CONVENTION AS AMENDED BY THE HAGUE PROTOCOL OF 1955
AND THE MONTREAL ADDITIONAL PROTOCOLS NOS. 1 AND 2 AND PROTOCOL
4 OF 1975

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

CHAPTER 1

SCOPE—DEFINITIONS

Article 1

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

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

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

Article 2

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

(2) In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

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

CHAPTER II

DOCUMENTS OF CARRIAGE

SECTION 1—PASSENGER TICKET

Article 3

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

- (a) an indication of the places of departure and destination;

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

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

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

SECTION III—DOCUMENTATION RELATING TO CARGO

Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.
2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.
3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph 2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

Article 6

1. The air waybill shall be made out by the consignor in three original parts.
2. The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

When there is more than one package:

- a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used.

Article 8

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

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

Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

less, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10

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

Article 11

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

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.

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

Article 13

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

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

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

Article 14

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

Article 15

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

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

Article 16

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

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

CHAPTER III

LIABILITY OF THE CARRIER

Article 17

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,

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.
2. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.
3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:
 - a) inherent defect, quality or vice of that cargo;
 - b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
 - c) an act of war or an armed conflict;
 - d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.
4. The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.
5. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

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

Article 20

In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be 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 them to take such measures.

Article 21

1. In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

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

Article 22 (As it reads where Additional Protocol No. 1 applies)

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 8 300 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. 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 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.

4. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 125 000 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 of Article 22; and 5 000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

Article 22 (As it reads where Additional Protocol No. 2 applies but not Protocol No. 4)

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. 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 17 Special Drawing Rights 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 332 Special Drawing Rights 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 terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 a) and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 250 000 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 a) of Article 22; and 5 000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

Article 22 (As it reads where Additional Protocol No. 2 and Protocol No. 4 apply)

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. 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, the liability of the carrier is limited to a sum of 17 Special Drawing Rights 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 carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.
c) 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

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

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 332 Special Drawing Rights 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 damage 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 terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs (1) and (2) (a) and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 250000 monetary units per passenger with respect to paragraph (1) of Article 22; and 250 monetary units per kilogramme with respect to paragraph (2) of Article 22 and 5000 monetary units per passenger with respect to paragraph 3 of article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

6. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2 (b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned.

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 carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued**Article 25*

In the carriage of passengers and baggage, 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. In the carriage of passengers and baggage, 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 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

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

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 assumed liability for the whole journey.

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

Article 30A

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

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

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

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

(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

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

Article 34

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

Article 35

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

Article 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.

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

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

Article 38

- (1) This Convention shall, after it has come into force, remain open for accession by any State.
- (2) The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.
- (3) The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

- (1) Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.
- (2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

- (1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.
- (2) Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which 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 40A

- (1) In Article 37 paragraph 2, and Article 40, paragraph 1, the expression a *High Contracting Party* shall mean a *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.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued**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.

(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed.)

ADDITIONAL PROTOCOL

(With reference to Article 2)

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

ADDITIONAL PROVISIONS OF THE HAGUE PROTOCOL AFFECTING
THE WARSAW CONVENTION

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.

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

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.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

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 authorised, 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 Organisation or of the United Nations, and to the International Civil Aviation Organisation.

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Protocol was signed.)

ADDITIONAL PROVISIONS OF ADDITIONAL PROTOCOL NO. 1
AFFECTING THE WARSAW CONVENTION

CHAPTER II

SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

Article III

The Warsaw Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the place 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 in the territory of another State.

CHAPTER III

FINAL CLAUSES

Article IV

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 by Additional Protocol No. 1 of Montreal, 1975*.

Article V

Until the date on which this Protocol comes into force in accordance with the provisions of Article VII, it shall remain open for signature by any State.

Article VI

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 Warsaw Convention shall have the effect of accession to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article VII

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 Polish People's Republic.

Article VIII

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

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

2. Accession to this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article IX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.

2. Denunciation shall take effect six months after the receipt by the Government of the Polish People's Republic 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 X

No reservation may be made to this Protocol.

Article XI

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or of that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

Article XII

As between the Parties to this Protocol which are also Parties 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, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended by Additional Protocol No. 1 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

Article XIII

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article VII at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

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

DONE at Montreal on the twenty-fifth day of the month of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the 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.

ADDITIONAL PROVISIONS OF ADDITIONAL PROTOCOL NO. 2
AFFECTING THE WARSAW CONVENTION

CHAPTER II

SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

Article III

The Warsaw Convention as amended at The Hague in 1955 and 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 in the territory of another State.

CHAPTER III

FINAL CLAUSES

Article IV

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this 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, and by Additional Protocol No. 2 of Montreal, 1975*.

Article V

Until the date on which this Protocol enters into force in accordance with the provisions of Article VII, it shall remain open for signature by any State.

Article VI

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 Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued**Article VII*

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 Polish People's Republic.

Article VIII

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.
2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.
3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article IX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.
2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.

Article X

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 Polish People's Republic 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 XI

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

Article XII

As between the Parties to this Protocol which are also Parties 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, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the “Guadalajara Convention”) any reference to the “Warsaw Convention” contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

Article XIII

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article VII at the Ministry for Foreign Affairs of the Polish People’s Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People’s Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

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

DONE at Montreal on the twenty-fifth day of the month of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the 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.

ADDITIONAL PROVISIONS OF PROTOCOL NO. 4 AFFECTING THE
WARSAW CONVENTION

CHAPTER II

SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

Article XIV

The Warsaw Convention as amended at The Hague in 1955 and 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 in the territory of another State.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued*

CHAPTER III

FINAL CLAUSES

Article XV

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this 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, and by Protocol No. 4 of Montreal, 1975*.

Article XVI

Until the date on which this Protocol enters into force in accordance with the provisions of Article XVIII, it shall remain open for signature by any State.

Article XVII

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 Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article XVIII

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 Polish People's Republic.

Article XIX

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.
2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.
3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article XX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 4—*continued*

2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

Article XXI

1. Only the following reservations may be made to this Protocol:—

a) a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, shall not apply to the carriage of persons, baggage and cargo 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; and

b) any State may declare at the time of ratification of or accession to the Additional Protocol No. 3 of Montreal, 1975, or at any time thereafter, that it is not bound by the provisions of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, in so far as they relate to the carriage of passengers and baggage. Such declaration shall have effect ninety days after the date of receipt of the declaration by the Government of the Polish People's Republic.

2. Any State having made a reservation in accordance with the preceding paragraph may at any time withdraw such reservation by notification to the Government of the Polish People's Republic.

Article XXII

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

Article XXIII

As between the Parties to this Protocol which are also Parties 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, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph (b) of the Guadalajara Convention is governed by this Protocol.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 4—*continued**Article XXIV*

If two or more States are Parties both to this Protocol and to the Guatemala City Protocol, 1971, or to the Additional Protocol No. 3 of Montreal, 1975, the following rules shall apply between them:

- (a) the provisions resulting from the system established by this Protocol, concerning cargo and postal items, shall prevail over the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No. 3 of Montreal, 1975;
- (b) the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No. 3 of Montreal, 1975, concerning passengers and baggage, shall prevail over the provisions resulting from the system established by this Protocol.

Article XXV

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article XVIII at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

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

DONE AT MONTREAL on the twenty-fifth day of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the 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.

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 5

Section 91A

THE GUADALAJARA CONVENTION

PART 1

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.

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 consignor or with a person acting on behalf of the passenger or consignor;
- (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.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 5—*continued*

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 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

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 5—*continued*

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 Specialised 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 Organisation by the Government of the United States of Mexico.

SCHEDULE—*continued*NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*SCHEDULE 5—*continued**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 any of the Specialised 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. The 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 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, extended 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 Organisation and to all States Members of the United Nations or of any of the Specialised 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 authorised, 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

SCHEDULE—*continued*

NEW SCHEDULES 4 AND 5 ADDED TO PRINCIPAL ACT—*continued*

SCHEDULE 5—*continued*

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 Organisation and to all States Members of the United Nations or of any Specialised Agency.

(Here follow signatures.)