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CONVENTION FOR INTERNATIONAL CARRIAGE BY AIR

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR, DONE AT MONTREAL, MAY 28, 1999

SEPTEMBER 6, 2000.—The Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 6, 2000.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (the "Convention"). The report of the Department of State, including an article-by-article analysis, is enclosed for the information of the Senate in connection with its consideration of the Convention.

I invite favorable consideration of the recommendation of the Secretary of State, as contained in the report provided herewith, that the Senate's advice and consent to the Convention be subject to a declaration on behalf of the United States, pursuant to Article 57(a) of the Convention, that the Convention shall not apply to international carriage by air performed and operated directly by the United States for noncommercial purposes in respect to its functions and duties as a sovereign State. Such a declaration is consistent with the declaration made by the United States under the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw October 12, 1929, as amended (the "Warsaw Convention") and is specifically permitted by the terms of the new Convention.

Upon entry into force for the United States, the Convention, where applicable, would supersede the Warsaw Convention, as amended by the Protocol to Amend the Warsaw Convention, done at Montreal September 25, 1975 ("Montreal Protocol No. 4"), which entered into force for the United States on March 4, 1999. The Convention represents a vast improvement over the liability regime established under the Warsaw Convention and its related instruments, relative to passenger rights in the event of an accident. Among other benefits, the Convention eliminates the cap on carrier liability to accident victims; holds carriers strictly liable for proven damages up to 100,000 Special Drawing Rights (approximately $135,000) (Special Drawing Rights represent an artificial "basket" currency developed by the International Monetary Fund for internal accounting purposes to replace gold as a world standard); provides for U.S. jurisdiction for most claims brought on behalf of U.S. passengers; clarifies the duties and obligations of carriers engaged in code-share operations; and, with respect to cargo, preserves all of the significant advances achieved by Montreal Protocol No. 4.

I recommend that the Senate give early and favorable consideration to this Convention and that the Senate give its advice and consent to ratification, subject to a declaration that the Convention

shall not apply to international carriage by U.S. State aircraft, as provided for in the Convention.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 23, 2000.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 ("the Convention"). I recommend that this Convention be transmitted to the Senate for its advice and consent to ratification, subject to a declaration to be made on behalf of the Untied States that the Convention shall not apply to international carriage by air performed and operated directly by the United States for non-commercial purposes in respect to its functions and duties as a sovereign State. Such a declaration is consistent with the declaration made by the United States under the Convention for the Unification of Certain Rules Relating to International Transportation by Air, done at Warsaw October 12, 1929 (the "Warsaw Convention") and is specifically permitted by the terms of the new Convention. A detailed article-by-article analysis of the new Convention is enclosed for the information of the Senate.

BACKGROUND

1. The Warsaw Convention (1929) and The Hague Protocol (1955)

The Convention represents the culmination of more than four decades of efforts by the United States, initially to increase, and later to eliminate, the meager and arbitrary limits of liability (approximately $8,300 per passenger) applicable when passengers are killed or injured in international air carrier accidents and the harm was not due to the carrier's willful misconduct. The liability limits were set first in 1929 by the Warsaw Convention, which provides limitations on liability and uniform liability rules applicable to international air transport of passengers, cargo and mail. The United States has been a party to the Warsaw Convention since 1934.

Efforts by the United States in the early 1950s to raise the limits of liability succeeded only in doubling the original Warsaw Convention liability limit to $16,600, as codified in the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at the Hague September 28, 1955 ("The Hague Protocol"). In response to the inadequacy of that limit, the United States considered a form of accident insurance legislation in conjunction with considering ratification of The Hague Protocol. The proposed legislation fixed various levels of

compensation based upon the type of injury sustained by the passenger. The cost of the insurance would have been built into international carrier ticket prices. The Hague Protocol was sent to the Senate for its advice and consent to ratification, but when the insurance legislation package failed, due largely to the inadequacy of the proposed liability limits, The Hague Protocol was withdrawn.

2. The Montreal Inter-carrier Agreement (1966)

Failure of the insurance legislation domestically, coupled with increasing dissatisfaction with the Warsaw liability limits, even as increased by The Hague Protocol, led the United States, in 1965, to submit a notice of denunciation of the Warsaw Convention. However, before it went into effect, the United States withdrew this notice of denunciation in consideration of a private voluntary agreement negotiated under the auspices of the International Air Transport Association (IATA) that was signed by all major foreign and U.S. carriers serving the United States (the "Montreal Inter-carrier Agreement"). The Montreal Inter-carrier Agreement ensured that accident victims on flights to or from the United States are compensated for up to $75,000 of proven damages, whether or not the negligence of the carrier was the cause of the accident. In time, all foreign carriers operating services to or from the United States accepted the terms of the Montreal Inter-carrier Agreement.

3. The Guadalajara Convention (1961)

During the period when The Hague Protocol and supplemental insurance legislation were under consideration, a further diplomatic conference was held in Guadalajara, Mexico for the limited purpose of supplementing the Warsaw Convention to address indirect carriage of cargo. In operations involving indirect carriage of cargo, a consignor purchases transportation from one carrier, such as an air freight forwarder or consolidator ("the contracting officer"), but the transportation is provided by another carrier (the "actual carrier"), in accordance with an agreement between the carriers. The product of the diplomatic conference was 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, done at Guadalajara September 18, 1961 (the "Guadalajara Convention"). The United States did not ratify the Guadalajara Convention, due in part to questions within the U.S. Government as to whether, in light of the unreasonable limits on airline liability for passengers, the United States should withdraw from the Warsaw Convention. The essential terms of the Guadalajara Convention have been incorporated into the Convention at Chapter V, which addresses, among other things, modern code-share arrangements.

4. The Guatemala City Protocol (1971)

Further efforts to advance the cause of passenger rights were reflected in the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by The Hague Protocol, done at Guatemala City March 8, 1971 ("Guatemala City Protocol"). This Protocol held carriers strictly liable for up to 1,500,000 francs ($100,000) of proven dam-

ages in the event of passenger death or injury, but that amount constituted an unbreakable limit on liability per passenger, even if the carrier engaged in willful misconduct. However, the Guatemala City Protocol expressly recognized the right of States to supplement passenger recoveries through State legislated insurance plans. This Protocol had not been sent to the U.S. Senate for its advice and consent to ratification, when there arose another opportunity to negotiate a more favorable and more comprehensive revision of the Warsaw Convention. This opportunity was the 1975 Diplomatic Conference on Air Law in Montreal.

5. The 1975 Montreal Protocols

At the 1975 diplomatic conference, called primarily to deal with cargo issues, the key substantive provisions of the Guatemala City Protocol were incorporated into Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by The Hague Protocol and the Guatemala City Protocol, done at Montreal September 25, 1975 ("Montreal Protocol No. 3"). In translating the Guatemala City Protocol provisions into the Montreal Protocol No. 3, the only change in content was the replacement of the gold standard with the currency conversion formula based on "Special Drawing Rights" (hereinafter referred to as "SDR," which is an artificial 'basket' currency developed by the International Monetary Fund for internal accounting purposes).

Also negotiated at the same diplomatic conference as Montreal Protocol No. 3 was the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by The Hague Protocol, done at Montreal September 25, 1975 ("Montreal Protocol No. 4"). Among other things, this Protocol eliminated the outmoded cargo documentation provisions of the Warsaw Convention, thereby facilitating the application of electronic commerce to international air cargo. For example, Montreal Protocol No. 4 eliminated the need for consignors of cargo to complete detailed air waybills prior to consigning goods to a carrier. In place of such detailed air waybills, consignors could use simplified electronic records of facilitate shipments.

Finally, there were two other Protocols negotiated at the 1975 diplomatic conference, referred to as Montreal Protocols numbers 1 and 2. These protocols related solely to the conversion from a gold standard to the SDR standard for purposes of calculating all quantitative limitations on liability under the Warsaw Convention and under the Warsaw Convention as amended by The Hague Protocol. The United States signed Montreal Protocols Nos. 3 and 4, but not Nos. 1 and 2, when they were opened for signature on September 25, 1975.

Following the singing of Montreal Protocol No. 3, and consistent with its provisions, the United States considered domestic legislation that would have established a Supplemental Compensation Plan providing for a $200,000 insurance based supplement to the Montreal Protocol No. 3 carrier liability limit for passengers (increasing total recovery to approximately $300,000). An effort in 1981 to achieve Senate advice and consent to U.S. ratification of that Protocol, along with Montreal Protocol No. 4, was unsuccess-

ful, due in large part to concerns about accepting any limits on passenger recoveries. Similarly, a subsequent effort to achieve Senate advice and consent to ratification of Montreal Protocol No. 3 in conjunction with a new Supplemental Compensation Plan that contained no liability limits also did not garner the necessary support in the Senate.

6. The IATA and ATA Inter-carrier Agreements (1997)

In the face of the failure of governmental efforts to modernize the liability regime for passengers, the Department of Transportation facilitated communications among U.S. and foreign carriers, under the auspices of the IATA and the Air Transport Association (ATA) to develop private voluntary agreements under which carriers would waive the passenger liability limits of the Warsaw Convention and its related instruments (the "Warsaw liability limits"). In February 1997, the Department of Transportation approved a set of two IATA and one ATA inter-carrier agreements, all of which, at a minimum, waived the Warsaw liability limits in their entirety. Because these agreements waived the Warsaw liability limits for participating carriers, they effectively superseded the 1966 Montreal Inter-carrier Agreement, by which carriers had merely waived the limits on liability up to $75,000 per passenger.

As of June 1, 2000, 122 international carriers, representing more than ninety percent of the world's air transport industry, have signed the IATA Inter-carrier Agreement on Passenger Liability (IIA), which waives the Warsaw liability limits. Most of the carriers signing the IIA also signed the second IATA agreement, which requires carriers to pay up to 100,000 SDR (approximately $135,000) to accident victims, regardless of carrier negligence. Consequently, any accident victim having a claim against a carrier that was party to this second IATA agreement would have an absolute right to recover up to 100,000 SDR of proven damages. The ATA agreement, signed by a number of U.S. carriers, describes the manner in which carriers agree to implement the two IATA agreements. In addition to waiving the Warsaw liability limit for passenger injuries and accepting 100,000 SDR of strict liability, airlines signatory to the ATA agreement also agree, subject to application law, that compensation for passenger injuries may be determined by reference to the law of the domicile or permanent residence of the passenger. Meanwhile, at governmental levels, a number of States adopted domestic laws or regulations to address their growing dissatisfaction with the Warsaw liability limits.

7. Montreal Protocol No. 4 and Cargo Operations

Until 1988, nothing had been done in the United States to modernize the rules relating to the air cargo industry. Accordingly, following Senate advice and consent to ratification, given on September 28, 1998, the United States accomplished its objective of modernizing rules for the international air-cargo industry by ratifying Montreal Protocol No. 4, which entered into force for the United States on March 4, 1999. Among other things, this Protocol eliminated requirements for paper-based transactions, including the requirement to completed detailed air waybills. In accordance with the provisions of Montreal Protocol No. 4, the United States

also became bound by the provisions of The Hague Protocol when it ratified Montreal Protocol No. 4. The passenger liability limitations contained in The Hague Protocol, although objectionable to the United States decades earlier, no longer were an obstacle, because they were effectively superseded by the IATA and ATA Intercarrier Agreements, by which most major international scheduled carriers had waived those limits.

8. The 1999 International Conference on Air Law

The IIA and Montreal Protocol No. 4 together represented a reasonable interim fix, but not a long-term solution, to the problem of creating a modernized uniform liability regime for international air transportation. Work on that larger task commenced at the International Civil Aviation Organization (ICAO) in 1997 and was completed at the May 1999 International Conference on Air Law in Montreal at which the convention was negotiated and open for signature.

ICAO had long recognized the need for a new convention to replace the patchwork of liability regimes around the world. At present, carriers are subject to vastly different liability regimes, depending upon the treaties to which their governments are parties and the private inter-carrier agreements that they have signed. In addition, differences in size and financial strength of the world's carriers, as well as differences in the objectives and legal systems of ICAO member States, have complicated any effort to achieve international consensus on modernization. Despite these differences, the Convention adopted on May 28, 1999 in Montreal represents a success with respect to all key U.S. policy objectives. It was immediately signed by 52 countries, including the United States.

The Convention requires ratification, acceptance, approval or accession by thirty States before it enters into force. Upon entry into force, the Convention will take precedence over the Warsaw Convention and any of its amendments and related instruments, and as a practical matter will supersede the private inter-carrier agreements, when the State or States relevant in a particular accident are party to the new Convention. For the United States, the new Convention, following U.S. ratification and entry into force, would supersede the Warsaw Convention, as amended, for flights between the United States and Foreign States also party to the Convention and for international flights having their origin and destination in the United States (round-trips).

THE CONVENTION

There are currently more than 135 parties to the Warsaw Convention either in its original form or one of its amended forms. Some States separately have adopted laws or regulations relating to international carrier liability. In addition, as noted earlier, there are private voluntary agreements among carriers relating to liability. The result of these many instruments is a patchwork of liability regimes. The new Convention is designed to replace the Warsaw Convention and all of its related instruments and to eliminate the need for the patchwork of regulation and private voluntary agreements.

The most notable features of the new Convention include: (1) it removes all arbitrary limits on recovery for passenger death or injury; (2) it imposes strict liability on carriers for the first 100,000 SDR of proven damages in the event of passenger death or injury; (3) it expands the bases for jurisdiction for claims relating to passenger death or injury to permit suits in the passenger's homeland if certain conditions are met; (4) it clarifies the obligations of carriers engaged in code-sharing operations; and (5) it preserves all key benefits achieved for the air cargo industry by Montreal Protocol No. 4. A more detailed review of the essential elements of the Convention follows.

The Convention generally is limited by Article 1 to commercial international air carriage, including flights between two States Parties to the Convention or a round trip from a State Party to the Convention with an agreed stopping point in another State, regardless of whether that State is party to the Convention. Article 2 notes that the Convention may cover air carriage provided by a State for compensation.

Articles 3 through 11 of the Convention discuss documentation requirements for international air carriage of passengers, baggage, and cargo. Most significantly, they preserve the benefits to the cargo industry achieved under Montreal Protocol No. 4, including the elimination of the need for consignors of cargo to complete detailed air waybills prior to consigning goods to a carrier. Under the new provisions, as under Montreal Protocol No. 4, consignors may use simplified electronic records to facilitate shipments. Articles 12 through 16 address the relative rights and obligations of carriers, consignors, and consignees of air cargo. As with Articles 3 through 11, these provisions preserve all of the significant advances benefiting the air cargo industry established by Montreal Protocol No. 4.

Article 17 defines conditions required for carrier liability for harm to passengers, including a death or bodily injury and an accident occurring within a defined time frame. At the International Conference on Air Law at which the Convention was adopted, delegates considered making express reference to recovery for mental injury, but instead resolved to leave untouched legal precedents developed under the language of the Warsaw Convention, acknowledging that such precedents currently allow the recovery of mental injury in certain situations and that the law in this area will continue to develop in the future. Article 17 also contains rules for carrier liability for lost, damaged or destroyed baggage, just as Article 18 contains such rules for cargo. Liability for damages associated with the delay of passengers, baggage or cargo is addressed in Article 19.

Consistent with provisions of the Warsaw Convention and its related instruments, Article 20 details the conditions under which a carrier can exonerate itself, wholly or partly, from liability by showing, for example, that the person claiming compensation caused or contributed to the damage by negligence or a wrongful act or omission.

The Convention, at Article 21, eliminates all arbitrary limits on air carrier liability with respect to accident victims. The carrier may avoid liability for the full amount of damages only if it proves

that it was not negligent or that a third party was solely responsible for the damages. Thus, victims or their heirs may recover all provable damages allowed under applicable State law, in contrast to the arbitrary caps under the Warsaw Convention and its related instruments. As a further benefit for accident victims, Article 21 holds carriers strictly liable for the first 100,000 SDR of proven damages for each passenger, i.e., the carrier may not avoid liability for this amount, even if the carrier can prove that the harm was not caused by its negligence. The only exception to this strict liability is that the carrier may be able to avoid paying any damages under the exoneration (i.e., contributory negligence) provisions of Article 20.

Article 22 generally preserves limits on liability in relation to delay, baggage, and cargo. These limits—4,150 SDR (approximately $5,600) for delay of passengers; 1,000 SDR (approximately $1,350) per passenger for claims related to baggage; 17 SDR (approximately $23) per kilogram for cargo—follow precedents set by the Warsaw Convention, as amended by The Hague Protocol and Montreal Protocol Nos. 3 and 4.

Article 24 of the Convention provides for inflation based increases every five years of the various SDR amounts and limits that remain in the Convention. Operation of the provision would result in inflation-based increases whenever the inflation factor exceeds ten percent at the time of a review. However, if a majority of States Parties register timely disapproval of an increase, then the matter is referred to a meeting of States Parties. This provision applies to the limit of "strict" liability set by Article 21 for passenger claims and the Article 22 limits in relation to delay, baggage and cargo. Article 25 acknowledges the rights of carriers to stipulate to raising or eliminating the limits of liability established by the Convention.

The Convention has a provision on advance payments, Article 28, which acknowledges the right of States to have national laws that require their own carriers to make such payments in the event of passenger death or injury and addresses certain procedural issues related to such payments. In addition, a resolution adopted by the Diplomatic Conference as part of the Final Act encourages States to adopt such laws.

The Convention's provision on jurisdiction, Article 33, reflects the U.S. success in achieving a key U.S. objective with regard to the Convention—the creation of a "fifth jurisdiction" to supplement the four bases of jurisdiction provided under the Warsaw Convention. Article 33(1), like the Warsaw Convention, allows a suit to be brought against a carrier in the country: (1) of its incorporation, (2) of its principal place of business; (3) where the ticket was purchased, and (4) of destination of the passenger. Article 33(2) of the new Convention allows cases involving the death or injury of a passenger to be brought in the country of the passenger's principal and permanent residence, so long as the carrier provides service to that country, either directly or via a code share or other similar arrangement with another carrier, and the carrier conducts business there from premises leased or owned by it or by a carrier with which it has a commercial arrangement, for example, a code-share arrangement. Given the number of carriers whose operations in the

United States satisfy these criteria, this fifth jurisdiction provision should ensure that nearly all U.S. citizens and other permanent residents of the United States have access to U.S. courts to pursue claims under the Convention.

Articles 39–48 of the Convention define the rights of passengers and consignors in operations where all or part of the carriage is provided by an airline that is not party to the contract of carriage (e.g., code-share operations, freight consolidators, etc.). The provisions follow the precedent set by the Guadalajara Convention. Pursuant to Article 40, when a claim arises under the Convention, a claimant may bring suit against the carrier from which the carriage was purchased or against the code-sharing carrier operating the aircraft at the time of the accident.

In accordance with the provisions of Article 53, the Convention requires that thirty States consent to be bound to the Convention before it may enter into force. Article 53 also permits Regional Economic Integration Organizations (REIO) (such as the European Union) to be parties, but does not grant them the right to vote or otherwise to be counted. Accordingly, as noted in Article 53(2), a REIO would not be counted for purposes of a determination, in accordance with Article 24, as to whether liability limitations in the Convention should be adjusted for inflation. Similarly, a REIO would not be counted for purposes of bringing the Convention into force, as noted in Article 53(6). The Convention has no termination date, but may be denounced by any State Party, pursuant to Article 54.

To accomplish its fundamental purpose of establishing uniformity in the context of international carriage by air, the Convention limits reservations available to States party to it. Article 57 describes the only two possible reservations that States may make. These reservations allow States to exempt from application of the Convention: (a) the operations of State aircraft and (b) the operations of aircraft chartered by the military. These limited reservations generally are consistent with the reservations available under the Warsaw Convention and its related instruments. The reservation relating to State aircraft operations was revisited to clarify that the reservation is available only for non-commercial operations related to the functions and duties of a sovereign State. Consistent with the past practice of the United States under the Warsaw Convention and its related instruments, I recommend that the United States make the declaration, pursuant to Article 57(a) of the Convention, to exempt only the operations of State aircraft from application of the Convention.

CONCLUSION

The provisions described above reflect the many benefits that will accrue under the Convention to the air transportation industry and its consumers. One key benefit not reflected in the provisions themselves is the benefit of uniformity. Based upon the response to the Convention at the diplomatic conference and communications with other governments since that time, I believe that U.S. ratification of this Convention will encourage ratification by a number of other States and will lead to a much-needed and long sought after

modernized unification of the liability regime applicable to international air carriers.

Certain of the passenger benefits codified in the Convention already are provided for under the IATA/ATA Agreements. However, those agreements are voluntary on the part of carriers; they are not embodied in law. Also, while airlines that have signed those agreements uniformly waive the Warsaw liability limits, they do not all accept strict liability up to 100,000 SDR. Furthermore, the inter-carrier agreements do not contain provisions to protect against inflation. In addition, those agreements do not contain the invaluable supplementary "fifth" jurisdictional provision codified at Article 33(2) of the Convention. Finally, in the case of code-share operations, the IATA/ATA Agreements do not assure passengers and cargo consignors of recourse against both the contracting carrier and the actual carrier operating the flight.

A more detailed article-by-article analysis of the provisions of the Convention is enclosed for the information of the Senate. The Department of Transportation and the Department of State cooperated in the negotiation of the Convention. Together with the Department of State, the Departments of Defense, Justice, and Transportation all concur in the submission of the Convention to the Senate for its advice and consent to ratification. Support for the Convention within the United States is broadly based and includes groups representing families of aircraft accident victims, the carriers, manufacturers, and lawyers specializing in representing plaintiffs and defendants in aviation accidents. Responses from all fronts have been positive.

The entry into force of the new Convention would represent the culmination of a four decades-long effort by the United States and other countries to persuade the international aviation community to provide increased economic protection for the international air traveler and shipper with a regime of liability and modernized procedures that match the developments in today's aviation industry. I therefore recommend that you transmit the new Convention to the Senate at an early date with the recommendation that the convention be approved at the earliest possible time, subject to a declaration on behalf of the United States that the Convention shall not apply to international carriage by air performed and operated directly by the United States for non-commercial purposes in respect to its functions and duties as a sovereign State.

Respectfully submitted,

STROBE TALBOTT.

Article-by-Article Analysis of the Convention
for the Unification of Certain Rules for
International Carriage by Air
Done at Montreal May 28, 1999

Explanatory Note

The Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (the "Convention") has its roots in the Convention for the Unification of Certain Rules Relating to International Transportation by Air, done at Warsaw October 12, 1929, as amended by the instruments listed below. Among these instruments, the United States has ratified Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw October 12, 1929, as amended by the Protocol done at The Hague September 28, 1955, done at Montreal September 25, 1975, which entered into force for the United States on March 4, 1999. Statements in this report that there was "no change" reflect the fact that the new Convention did not alter the provisions of the Warsaw Convention, as amended by Montreal Protocol No. 4.

Much of the Convention derives from provisions in the Warsaw Convention and its related instruments negotiated over a span of several decades. An effort was made to trace the origin of the provisions of the Convention to assist in understanding the extent to which the Convention tracks existing law. Where such precedents were found, they are indicated in brackets at the beginning of the relevant paragraph in the analysis below. To simplify references to the Warsaw Convention and its related instruments, the following abbreviations, followed by article and section cites, are used:

W — Convention for the Unification of Certain Rules Relating to International Transportation by Air, done at Warsaw October 12, 1929 (the "Warsaw Convention"). We note that the only authentic text of this Convention is in the French language. While the United States translated the title of the Convention as above, the United Kingdom translated the title to be, "Convention for the Unification of Certain Rules Relating to International Carriage by Air." The British term "carriage," rather than "transportation," is internationally accepted for the title and body of amendments to the Warsaw Convention.

H — Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw October 12, 1929, done at The Hague September 28, 1955 ("The Hague Protocol"). All of the

provisions of The Hague Protocol were incorporated into Montreal Protocol No. 4 and became effective for the United States as a result of the entry into force for the United States of Montreal Protocol No. 4.

Guada. — 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, done at Guadalajara September 18, 1961 ("Guadalajara Convention").

GCP — Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Warsaw October 12, 1929, as Amended by the Protocol done at The Hague September 28, 1955, done at Guatemala City March 8, 1971 ("Guatemala City Protocol").

MP3 — Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw October 12, 1929, as Amended by the Protocol done at The Hague September 28, 1955 and at Guatemala City March 8, 1971, done at Montreal September 25, 1975 ("Montreal Protocol No. 3").

MP4 — Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw October 12, 1929, as Amended by the Protocol done at The Hague September 28, 1955, done at Montreal September 25, 1975 ("Montreal Protocol No. 4").

Chapter I

General Provisions

Article 1 — Scope of Application

1. [W.1.1] This essentially unchanged provision defines the applicability of the Convention to encompass all international carriage by air of persons, baggage, or cargo, whether for reward or performed gratuitously by an "air transport undertaking."

2. [W.1.1; H.I.2] This provision defines "international carriage" as that which originates in the territory of one of the States Party to the Convention and terminates in that of another, or that which originates and terminates in the territory of one State but includes an agreed stop in the territory of another State, regardless of whether that State is a party to the

Convention. In accordance with Article 1, paragraphs (2) and (3), "international carriage" includes all segments of an international journey as shown on the ticket, including domestic segments of an international journey. Article 1(2) explicitly excludes from the scope of the Convention carriage between two points within the territory of a single State Party without an agreed stop outside the territory of that State (domestic carriage).

3. [H.I.3] This paragraph establishes that carriage to be performed by several successive carriers (i.e., inter-line operations), even if performed under multiple contracts (tickets or air waybills), is treated as undivided carriage if the carrier and the passenger or consignor considered it as such. Therefore, if in international carriage, even a segment performed exclusively within the same State would fall within the scope of the Convention.

4. This paragraph incorporates the clarifications of the Guadalajara Convention Supplementary to the Warsaw Convention and The Hague Protocol with respect to inclusion of carriage by air performed by a person other than a contracting carrier (*e.g.*, code-share operations) as provided in Chapter V of the Convention.

Article 2 — Carriage Performed by State and Carriage of Postal Items

1. [W.2.1] This provision makes the Convention applicable to States and public bodies when they perform carriage pursuant to Article 1. However, under Article 57, reservations are permitted to exclude from the Convention's coverage carriage performed by State aircraft for non-commercial purposes related to the functions and duties of a sovereign State and aircraft registered in a State where the entire capacity is reserved for the military authorities of that State.

2. [MP4.II.2] Carriage by air of postal items is within the scope of the Convention, but the carrier is liable only to the relevant postal authorities. The Constitution of the Universal Postal Union, with Protocols, the most recent of which was done at Seoul September 14,1994 and entered into force January 1, 1996, governs the liability of postal authorities to individuals making use of the mails.

3. [MP4.II.3] The applicability of the Convention to postal items is specifically limited to that provided for in Article 2, paragraph 2 (*i.e.*, claims by postal authorities).

4

Chapter II

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage

1. [GCP.II.1] This paragraph requires that passengers be provided with documentation containing departure and destination information. If departure and destination locations are in the same State and if there is at least one agreed stopping place outside of that State's territory, then paragraph (b) requires the carrier to indicate at least one such stopping place as well. Thus, as under current law in the United States, the documentation need only contain enough information (other than notice pursuant to paragraph 4, below) to determine the applicability of the Convention.

2. [GCP.II.2] This paragraph creates an alternative to the traditional ticketing requirement, thereby authorizing electronic ticketing on international flights, but requiring that the carrier offer a written statement of such information to the passenger. At the diplomatic conference, certain delegates proposed that airlines be obligated to provide such a written statement to all passengers. See Minutes of the First Meeting, May 11, 1999, p. 56-57. Ultimately, however, the conference agreed that the obligation of carriers was limited to offering, rather than providing, written statements to all passengers. Now, under the Convention, delivery of the statement is not required if the passenger does not request it, following such offer.

3. This paragraph requires that the carrier provide the passenger with a baggage identification tag for each piece of checked baggage. Previously, the "baggage check" could be, and generally was, incorporated in the passenger ticket.

4. [H.III.1.c] This paragraph preserves the requirement that carriers give passengers written notice that the Convention, if applicable, may limit carrier liability for death or injury; for the loss of, damage to, or the destruction of baggage; and for delay.

5. [GCP.II.3] This paragraph preserves the validity of a contract for air carriage, notwithstanding non-compliance with the Convention's documentation provisions. It similarly specifies that the Convention's provisions, including liability limits for baggage, delay and cargo, shall govern notwithstanding such non-compliance.

The following Articles 4 through 16 include the modernized cargo documentation provisions of Montreal Protocol No. 4, which authorize simplification and modernization of air cargo documentation.

Article 4 — Cargo

1. [MP4.III.5.1] This paragraph requires that the carrier deliver an air waybill to the consignor in respect of the carriage of cargo.

2. [MP4.III.5.2] This paragraph authorizes the substitution of other means (i.e., electronic records) for the traditional air waybill. However, a consignor is entitled, upon request, to a receipt identifying the cargo and access to the electronic record. This is consistent with Montreal Protocol No. 4, except to the extent that the consent of the consignor is no longer required for the utilization of electronic records. The Convention does not require delivery of a cargo receipt, except if it is requested by the consignor.

Article 5 — Contents of Air Waybill or Cargo Receipt

[MP4.III.8] As in The Hague Protocol and Montreal Protocol No. 4, under the new Convention, an air waybill or cargo receipt need include only that information necessary to determine the applicability of the Convention and the liability limitations, which are determined by weight. Paragraph (a) requires that the carrier indicate the places of departure and destination. If departure and destination places are in the same State, and if there is at least one agreed stopping place outside of that State's territory, then paragraph (b) requires that the carrier indicate at least one such stopping place. Paragraph (c) requires that the weight of the consignment be indicated.

Article 6 — Document Relating to the Nature of the Cargo

If required by applicable national law or otherwise deemed necessary by customs, police or similar public authorities, the consignor may be required to provide a document indicating the nature of the cargo. This provision was added as part of a compromise between States that wanted Article 5 to require inclusion of a description of the "nature of the goods" on air waybills and cargo receipts, due to concerns relating to the transport of hazardous cargo, and States, including the United States, that opposed reverting from the advances of Montreal Protocol No. 4 back to the Warsaw Convention standards that required unnecessarily detailed information in shipping records. This new Article was neither intended to impose any obligation beyond that

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required by Article 16 (formalities of customs, police or other public authorities) nor to limit the enforceability of relevant national law. According to its terms, the Article does not create any additional duty, obligation, or liability of the carrier. To further address the concerns of certain States relating to the transport of hazardous cargo, a Resolution (No. 3) was included in the Final Act of the May 1999 International Conference on Air Law in Montreal ("Conference Final Act") emphasizing the importance that consignors and others involved in international air cargo services comply with the labeling and other requirements set forth in ICAO Annex 18 for the handling of dangerous goods and that States enforce those requirements.

Article 7 — Description of the Air Waybill

[MP4.III.7] This provision applies when a carrier opts to rely on an air waybill, rather than an electronic record. Paragraphs 1 and 2 require that the consignor make out the air waybill in triplicate: Part 1 (the carrier's copy) is retained by the carrier after the consignor signs it, part 2 (the consignee's copy) is signed by both the carrier and the consignor, and part 3 is signed by the carrier and given to the consignor after the cargo is accepted. Paragraph 3 allows either party to use a printed or stamped signature in lieu of a hand signature. If the consignor asks the carrier to make out the air waybill, then the carrier is presumed to have done so on behalf of the consignor. This presumption may, nevertheless, be rebutted by evidence to the contrary.

Article 8 — Documentation for Multiple Packages

[MP4.III.7] In the case of multiple packages, and if the carrier so requests, the consignor must make out separate air waybills. This provision also provides for separate cargo receipts when there are multiple packages.

Article 9 — Non-Compliance with Documentary Requirements

[MP4.III.9] This Article preserves the validity of the contract and the Convention's applicability, including cargo liability limits, notwithstanding non-compliance with the provisions of the Convention (i.e., Articles 4-8) that set forth documentary requirements.

Article 10 — Responsibility for Particulars of Documentation

[MP4.III.10] Paragraph 1 places the burden on the consignor for ensuring the correctness of the information that it or its agent includes in or provides to the carrier for inclusion in the air waybill, the cargo

receipt, or any record described in paragraph 2 of Article 4. This Article was revised to apply where the person acting on behalf of the consignor is also the agent of the carrier. Paragraph 2, which is unchanged from Montreal Protocol No. 4, requires the consignor to indemnify the carrier against damage suffered by it, or by another to whom the carrier is liable that results from irregularity, incorrectness or incompleteness of information having been provided by the consignor or on its behalf. Essentially unchanged from Montreal Protocol No. 4, paragraph 3 places the burden of indemnification on the carrier for damage caused by insertion by the carrier or on its behalf of incomplete, irregular, or incorrect information in the cargo receipt or other record.

Article 11 — Evidentiary Value of Documentation

[MP4.III.11] Essentially unchanged from Montreal Protocol No. 4, paragraph 1 states that the air waybill or the cargo receipt are *prima facie* evidence of the contract for carriage and the terms mentioned therein. Similarly essentially unchanged, paragraph 2 recognizes the statements in the air waybill or in the cargo receipt pertaining to weight, dimensions, packaging and number of packages as *prima facie* evidence of the facts stated. Statements regarding quantity, volume, and condition of the cargo are not evidence against the carrier unless they have been checked by the carrier in the consignor's presence and the air waybill or cargo receipt so states, or such statements relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

[MP4.III.12] Paragraph 1 preserves the consignor's right to withdraw or to redirect the cargo shipment, subject to the consignor's contractual obligations to the carrier and the limitation that it may not prejudice the carrier or other consignors and must reimburse expenses occasioned by its exercise of this right. Paragraph 2 requires the carrier to notify the consignor promptly whenever execution of the instructions given under paragraph 1 is impossible. Paragraph 3 makes the carrier liable for damages to any person lawfully holding the consignor's part of the air waybill or cargo receipt if the carrier executes the instructions under paragraph 1 without requiring production of the consignor's document. Paragraph 4 terminates the consignor's power under Article 12 at the moment when the consignee's rights under Article 13 commence. The consignor may retain control of the cargo, however, if the consignee either refuses delivery or cannot be found.

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Article 13 — Delivery of the Cargo

[MP4.III.13] This Article defines the consignee's rights relative to a consignment. Paragraph 1 provides that, subject to the consignor's rights under Article 12, the consignee is entitled to delivery of the cargo upon its arrival at the destination on payment of charges due and compliance with the conditions of carriage. Thus, where a consignor seeks to exercise its rights under Article 12, its instructions must be received by the carrier before the consignee takes delivery. Paragraph 2 requires that the carrier notify the consignee promptly of the cargo's arrival, unless otherwise agreed. Paragraph 3 specifies that if the carrier admits to loss of the cargo or if the cargo fails to arrive within seven days of the date on which it ought to have arrived, then the consignee may proceed to enforce its contractual rights against the carrier.

Article 14 — Enforcement of the Rights of Consignor and Consignee

[MP4.III.14] This Article empowers both the consignor and the consignee to enforce their respective rights each in their own name pursuant to Articles 12 and 13, even if representing the interests of another person, provided that they carry out their contractual obligations.

Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties

[MP4.III.15] Paragraph 1 specifies that Articles 12, 13, and 14 do not affect the basic contractual relations between the consignor, consignee, or those with derivative interests. in a cargo shipment. Paragraph 2 establishes that express provisions in the air waybill or cargo receipt are the only means of varying the provisions of Articles 12, 13, and 14.

Article 16 — Formalities of Customs, Police or Other Public Authorities

[MP4.III.16] This Article has been modified for the sole purpose of modernizing the references to relevant authorities. Specifically, paragraph 1 requires the consignor to provide the documents required by customs, police, and other public authorities before the cargo may be delivered to the consignee and makes the consignor liable to the carrier for any damage caused by the failure to do this, unless the damage is due to the fault of the carrier, its servants or agents. Paragraph 2 absolves the carrier of any obligation to check the correctness or sufficiency of such documentation.

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Chapter III

Liability of the Carrier and
Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers -- Damage to Baggage

1. [W.17; GCP.IV.1] Paragraph 1 provides for carrier liability for death or bodily injury of a passenger caused by an accident on board the aircraft or in the course of embarking or disembarking. The carrier's limited defenses to liability are provided for elsewhere in the Convention (i.e., Article 21, below). It is expected that this provision will be construed consistently with the precedent developed under the Warsaw Convention and its related instruments.

Following extensive debate, the Conference decided not to include an express reference to recovery for mental injury, with the intention that the definition of "bodily injury" would continue to evolve from judicial precedent developed under Article 17 of the Warsaw Convention, which uses that term. See International Conference on Air Law, Vol I Minutes at p. 201 (Thirteenth Meeting, May 25, 1999, Summary of the Chairman of the Conference). The Conference adopted the following Statement, recorded in the Minutes of the Proceedings:

> With reference to Article 16 [sic], paragraph 1 of the Convention, the expression 'bodily injury' is included on the basis of the fact that in some States damages for mental injuries are recoverable under certain circumstances, that jurisprudence in this area is developing and that it is not intended to interfere with this development, having regard to jurisprudence in areas other than international carriage by air; . . . .

International Conference on Air Law, Vol. I Minutes at pp. 242-43 (Plenary, Sixth Meeting, May 27, 1999)

The reference in this statement to "jurisprudence in areas other than international carriage by air" reflects the concern of some States that jurisprudence under Article 17(1) of the Convention should not develop in a particular State beyond the then current jurisprudence of that State. Rather, that jurisprudence should continue to develop in a manner consistent with, not ahead of, jurisprudence in other areas in such States.

2. [GCP.IV.2] Paragraph 2 makes the carrier liable for destruction, loss, or damage to checked baggage caused by an event taking place on board the aircraft or

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while the baggage was in the charge of the carrier. The carrier may avoid liability to the extent that it proves the damage resulted from the inherent defect, quality, or vice of the checked baggage. The carrier is liable for damage to unchecked baggage only if the damage resulted from the fault of the carrier or its servants or agents. Thus, for checked baggage, as under the Warsaw Convention and its related instruments, the carrier is strictly liable for damages, subject to limited specified defenses. The burden of proof for carrier liability relating to destruction, loss or damage to unchecked baggage was not expressly addressed under the Warsaw Convention, but Article 17 paragraph 2 states that the burden of proof is on the claimant to prove carrier fault.

3. Paragraph 3 entitles the passenger to enforce the rights which flow from the contract of carriage when the carrier admits the loss of checked baggage or if it fails to deliver such baggage within twenty-one days of the date on which it ought to have arrived.

4. [GCP.IV.3] Paragraph 4 specifies that, except to the extent otherwise specified, the Convention's liability provisions apply equally to either checked or unchecked baggage.

Article 18 — Damage to Cargo

1. [MP4.IV.2] This paragraph specifies that the carrier is liable for destruction, loss, or damage to cargo occurring during the carriage by air, as defined in paragraphs 3 and 4.

2. [MP4.IV.3] This paragraph lists the defenses potentially available to a carrier for limiting or avoiding liability relative to destruction, loss of, or damage to cargo, which are: inherent defects, quality, or vice of the cargo; its defective packing by a person other than the carrier or its servants or agents; acts of war or an armed conflict; and acts by public authorities in connection with the entry, exit, or transit of the cargo. The carrier is exonerated only "to the extent" that the carrier proves that the damage resulted from one of these defenses. This represents a change from Montreal Protocol No. 4, under which the carrier was liable unless it proved that the damage was caused "solely" by one of these enumerated defenses.

3. [MP4.IV.4] Paragraph 3 generally defines the carriage by air as the period during which the cargo is in the carrier's charge. The Convention modifies the predecessor provision in Montreal Protocol No. 4 by deleting from the end of the paragraph the phrase, "whether in an airport or on board an aircraft, or, in

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the case of a landing outside an airport, in any place whatsoever." The modification first appeared in the Report of the Rapporteur on the Modernization and Consolidation of the Warsaw System, which was considered by the ICAO Legal Committee that prepared documents for the Conference (LC/30). *See* International Conference on Air Law, Vol. III Preparatory Materials, at page 66, para 5.4.14. In that context, the Rapporteur explained the purpose of the proposed modification to make clear that "the Convention applies whenever and wherever the cargo is in the possession custody or charge of the carrier, whether on or off airport premises..." The Rapporteur's proposal was adopted by LC/30. *See* International Conference on Air Law, Vol. III Preparatory Materials, at p. 173, para. 4:128.

4. [MP4.IV.5 modified by LC/30] Consistent with Montreal Protocol No. 4, paragraph 4 specifies that carriage by air does not extend to any carriage by land, sea, or inland waterway performed outside an airport. Where such surface transport is for the purpose of loading, delivery, or trans-shipment in the performance of a contract for carriage by air, damage is presumed, subject to proof to the contrary, to have been the result of an event that took place during the carriage by air. A new provision establishes that if the carrier substitutes carriage by another mode of transport, without the consent of the consignor, then such carriage is deemed to be within the period of carriage by air. Conference participants recognized that under modern methods of cargo air transport, surface carriage outside an airport is a normal and integral component of international carriage, as defined in Article 1, paragraph 2, of the Convention. When applying the Convention, courts are expected to take into consideration the facts associated with modern methods of cargo air transport. Moreover, this Article should be read in conjunction with Article 38(2), which permits carriers to include in their contracts for air carriage provisions relating to surface carriage that would not be within the period of carriage by air.

Article 19 — Delay

[W.19&20; GCP.VI; MP4.V] This Article, like its predecessor, provides that carriers shall be liable for delay of passengers, baggage, or cargo. However, the carrier's defense is slightly modified: It may now avoid liability by proving that it and its servants and agents took all measures "that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures." By replacing "all necessary measures" with this new standard, the new Article creates a more realistic and achievable negligence standard in the event of damages occasioned by delay.

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Article 20 — Exoneration

[GCP.VII; MP4.VI] Article 20 slightly modifies the Montreal Protocol No. 4 provision, which allows a carrier to avoid liability "to the extent" harm or damages were caused by an act of the claimant or other person from whom the claimant derived its rights. Under Article 20, for claims relating to passengers and baggage, as for cargo under Montreal Protocol No. 4, the carrier may now be exonerated "to the extent that" the carrier proves the damage was caused or contributed to by the negligence or other wrongful act or omission of the passenger or claimant. Because the Warsaw Convention and its related instruments allowed whole or partial exoneration of the carrier in accordance with applicable State law for claims involving passengers and baggage, the "to the extent" standard represents a modification to the Warsaw Convention and its related instruments. Article 20 applies to all liability provisions of the Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers

Paragraph 1 makes the carrier "strictly" liable up to 100,000 Special Drawing Rights (SDR) (approximately $135,000) for damages sustained in case of death or bodily injury to passengers, subject only to an exoneration defense under Article 20. For damages exceeding 100,000 SDR, paragraph 2 provides that the carrier may avoid liability by proving that the damage was not due to its own or its servants or agents' negligence or other wrongful act or omission or by proving that the damage was caused "solely" by the negligence or other wrongful act or omission of a third party. The third party sole negligence defense is new, representing a compromise with States that sought a burden of proof more favorable to the carrier. The defenses in paragraph 2 do not apply to the first 100,000 SDR's strict liability described in paragraph 1; however, a carrier now may avoid liability in excess of 100,000 SDR where an accident is entirely attributable to events wholly outside the carrier's control.

Most significantly, this Article eliminates prior arbitrary limitations on compensatory damages recoverable in the event of death or injuries to passengers found in the Warsaw Convention and its related instruments. With respect to international carriage covered by the Convention, this Article codifies an unlimited passenger liability regime and would, to that extent, eliminate the need for the waiver of the passenger liability limits effectuated under the International Air Transport

Association and Air Transport Association Inter-Carrier Agreements.

Article 22 — Limits of Liability in Relation to Delay, Baggage, and Cargo

1. [MP3.II.1.b] This paragraph sets a 4,150 SDR (approximately $5,600) limit on the liability of the carrier for damages caused by delay in the carriage of passengers.

2. [MP3.II.1.c; H.XI.2] Paragraph 2 limits carrier liability for destruction, loss, damage, or delay of both checked and unchecked baggage to 1,000 SDR per passenger (approximately $1,350), unless the passenger declares a higher value. In the event of loss, the carrier must pay the declared amount, unless the carrier proves that it exceeds the passenger's actual interest in delivery at destination, in which case liability is limited to such actual interest. By establishing a fixed liability limit for baggage, rather than the Warsaw Convention's weight-based limitation, this provision should expedite passenger check-in by avoiding the need to weigh baggage at that time.

3. [MP4.VII.b] Carrier liability for destruction, loss, damage, or delay of cargo is limited by this paragraph to 17 SDR per kilogram (approximately $10.43 per pound), unless the consignor declared that the cargo had a higher value. In such event, the carrier is liable for the higher value, unless the carrier proves that such higher value exceeds the consignor's actual interest in delivery at destination, in which case liability is limited to such actual interest.

4. [H.XI.2.b.; MP3.II.2.b] This paragraph, which originated with The Hague Protocol, provides that the carrier's liability for cargo is based on the weight of the package or packages destroyed, lost, damaged, or delayed. However, if the value of other packages covered by the same air waybill (or record preserved by the other means referred to in paragraph 2 of Article 4) is affected, then the total weight of all such packages is taken into account. In the case of pilferage, destruction, or damage to an item within a package, the weight of the entire package, not the weight of the pilfered item, determines the limit of the carrier's liability.

5. [H.XIII; MP4.IX] Paragraph 5 denies carriers the protection of the liability limitations of paragraphs 1 (passenger delay) and 2 (baggage) if the carrier or its servants or its agents are proven to have caused the damage intentionally or recklessly with knowledge that damage would probably result and, if the damage is caused

by a servant or agent, that servant or agent was acting within the scope of its employment. Consistent with Montreal Protocol No. 4, this willful misconduct exception to the liability limits does not apply to cargo.

6. [H.XI.4] This paragraph permits courts, in accordance with their own law, to award to plaintiffs court costs, other litigation expenses (including attorneys fees) incurred by the plaintiff, as well as interest, in addition to the amounts prescribed in Articles 21 and 22. However, if the carrier presents a written settlement offer to the plaintiff within six months of the occurrence that caused the damage or before the commencement of the action (whichever is later) and the amount offered is greater than the amount awarded, then the provision allowing the court to grant such additional amounts to the plaintiff does not apply. This "settlement inducement" provision is intended to encourage prompt settlement of claims.

Article 23 — Conversion of Monetary Units

1. [MP4.VII.d] Paragraph 1 adopts the Special Drawing Rights (SDR) valuation formula used by the International Monetary Fund (IMF) based on valuation on the date of judgment. States Party to the Convention that are also IMF Members shall use the IMF method of valuation when calculating values in their national currency. IMF Non-Members determine their own formula for conversion.

2. [MP4.VII.d] This paragraph entitles IMF Non-Members whose laws do not allow the application of the provisions of paragraph 1 to opt for fixed carrier liability in the amounts prescribed, linking the amounts to the Warsaw Convention's gold standard, and allowing rounding during conversion. Further conversion into national currency shall be made according to that State's law. Modifications in the paragraph reflect the change from weight based limits on baggage-related claims to limits set per passenger.

3. [International Maritime Organization (IMO) draft Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, Article 6(9c)] This paragraph, based on a draft IMO convention, calls on IMF Non-Member States Party to the Convention to calculate and to convert amounts in a manner consistent with the Convention's provisions for IMF Members, whenever possible. It also calls upon States Party to the Convention to give notice to the Depositary of their chosen manner of calculation or result of the conversion when depositing their instrument of ratification or

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acceptance, as well as any subsequent change in that method.

Article 24 — Review of Limits

1. For purposes of ensuring that the remaining liability limits in the Convention (passenger delay, baggage, and cargo, and the 100,000 SDR strict liability tier cut-off for passenger death or injury) adjust with inflation, this paragraph requires a review of the limits by the Depositary every five years. Special provisions are made for determining the date of the first review. A review begins with a determination of the inflation over the relevant period. The inflation factor is based on the weighted average of the annual rates of change in the Consumer Price Indices of the States whose currencies comprise the SDR.

2. This paragraph specifies that liability limits may be adjusted for inflation only if the inflation factor exceeds ten percent during the review period and a majority of States Party to the Convention do not object within three months of notification of the increase. ICAO, as the Depositary, performs a ministerial function of computing the inflation factor in accordance with the Consumer Price Indices of the IMF country formula; it then gives notice to States Party to the Convention of the computation when the inflation factor exceeds ten percent. These inflation-based increases take effect six months after such notification, at which time ICAO must immediately notify the States Party to the Convention of the entry into force of the revised limits. If a majority of States object within three months of the notification, the revision shall not become effective and a meeting of the States Party to the Convention must be convened to decide the matter. The Depositary is required to notify the States Party to the Convention immediately of the coming into force of any revision.

3. If the inflation factor exceeds thirty percent since the last revision or since the Convention's entry into force without a previous revision (even if less than five years), then an inflation review will be conducted if one-third of the States Party to the Convention so desire. If a review is conducted under this paragraph, then the procedures in paragraph 1 of the Article shall be utilized at regular five-year intervals beginning on the date five years following the date of the first review under this paragraph.

Article 25 — Stipulation on Limits

This Article clarifies that a carrier may at any time raise or eliminate the Convention's remaining limits on liability.

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Article 26 — Invalidity of Contractual Provisions

[W.23] Article 26 nullifies any carrier attempt to relieve itself of liability or to lower the Convention's liability limits, but provides that, notwithstanding the nullity of such provisions, the contract of carriage otherwise remains valid and subject to the Convention.

Article 27 — Freedom to Contract

[MP4.XII] The Article confirms the rights of the carrier to refuse to enter into a contract, to waive defenses available under the Convention, and to include conditions in its contract of carriage that do not conflict with the Convention. The language expressly permitting a carrier to waive any defenses available under the Convention does not appear in Montreal Protocol No. 4.

Article 28 — Advance Payments

This Article requires carriers to make advance payments, if required by their national law, to persons entitled to compensation as a result of an aircraft accident causing injury or death of passengers. The Article refers to payments covering immediate economic needs, but by its terms, it is subject to the requirements of national law and does not alter national law with respect to any such standards. Article 28 also provides that the making of such advance payments shall not constitute a recognition of liability and that such payments may be offset against amounts subsequently paid as damages by the carrier. In addition, Resolution No. 2, included in the Conference Final Act, urges carriers voluntarily to make such advance payments, whether or not required by national law, and encourages States to adopt appropriate measures under international law to promote advance payments by carriers.

Article 29 — Basis of Claims

[MP4.VIII.1 and 2; GCP.IX.2] This Article, taken from Montreal Protocol No. 4, provides that the Convention and its limits shall be applicable to all actions for damages arising in the carriage of passengers, baggage, and cargo, however such claims may be founded. Thus, for example, in the context of a code-share operation, a passenger's recourse against a contracting carrier, within the meaning of Article 39, would be subject to the provisions of the Convention; neither the contracting carrier, the actual carrier, nor their servants or agents could be held liable outside the Convention under any alternative tort or contract law theories for matters such as, for example, negligent

selection of, or failure to properly audit or monitor the safety of, the actual carrier. Questions as to who are the persons who have the right to bring suit and what are their respective rights are left to the law of the forum, including conflicts of law. As under the Warsaw Convention and its related instruments, punitive, exemplary, or any other non-compensatory damages are not recoverable. *See, e.g.*, In Re: Air Disaster at Lockerbie, Scotland on December 21, 1988, 928 F.2d 1267, 1281-88 (2d Cir. 1991), cert. denied, 502 U.S. 920 (1991).

Article 30 — Servants, Agents -- Aggregation of Claims

1. [H.XIV.1] Paragraph 1 clarifies that servants or agents may avail themselves of the same conditions and liability limitations to which the carrier is entitled under the Convention, if they prove that they were acting within the scope of their employment.

2. [H.XIV.2] This paragraph clarifies that the Convention's limits apply to the aggregate of recoveries against the carrier and its servants and agents.

3. [MP4.X] This paragraph applies a willful misconduct exception to the Convention's conditions and limits of liability with respect to servants and agents and in the aggregation of claims. As with Article 22(5), the exception does not apply to cargo claims. This is consistent with Montreal Protocol No. 4.

Article 31 — Timely Notice of Complaints

[W.26; H.XV] Paragraph 1 creates a presumption that checked baggage or cargo has been delivered in good condition and in compliance with the contract for carriage if the passenger or consignor does not complain. Paragraph 2 sets forth time limits within which complaints must be made after delivery for checked baggage or cargo that has been delayed or damaged. Paragraphs 3 and 4 bar claims against the carrier where no timely written complaint has been made, except in cases of carrier fraud. These time limitations would now apply only to checked baggage and cargo, but not to unchecked baggage.

Article 32 — Death of Person Liable

[W.27] This Article confirms that plaintiffs may sue a decedent's estate if the decedent is liable for damages under the Convention.

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Article 33 — Jurisdiction

1. [W.28.1] This paragraph provides that an action for damages under the Convention must be brought, at the plaintiff's option, in the territory of one of the States Party to the Convention before a court of the carrier's domicile or the carrier's principal place of business, the place where the contract was made, or the place of destination of the passenger.

2. This paragraph provides a major new benefit for accident victims or claimants on their behalf -- the "fifth jurisdiction.". This additional basis for jurisdiction, applicable only for passenger death or injury claims, permits a passenger or survivors to bring an action in the country of the "principal and permanent residence" of the passenger if the carrier operates passenger air services to or from that country or provides passenger air services under a "commercial agreement" (*e.g.*, a code share) and the carrier has owned or leased premises in such country from which it conducts its passenger air services (including premises of the carrier with which it has a commercial agreement). In accordance with the terms of the provision, this basis for jurisdiction is available even if the accident occurs on a passenger journey and air service that did not include a point in the country of the passenger's principal and permanent residence, provided that the carrier had the contacts with that country required by this paragraph.

3. This paragraph defines the nature of the commercial agreement referenced in paragraph 2, which would, for example, include code-sharing arrangements. It also defines the passenger's "principal and permanent residence," noting that nationality shall not be the determining factor (i.e., it shall not, by itself, establish the principal and permanent residence). Nevertheless, nationality may be considered as one of several factors for determining the passenger's "principal and permanent residence."

The Conference adopted a Statement recorded in the Minutes of the Proceedings which reflects the following additional comment on this provision:

> With reference to Article 33, paragraphs 2 and 3, these provisions are included in view of the special nature of international carriage by air.

(Minutes, Plenary, Sixth Meeting, May 27, 1999, pp. 242-43). This statement reflects the concern of certain delegations that this new basis for jurisdiction, the "principal and permanent residence" of the passenger, is appropriate for this Convention, but may not be

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appropriate for other conventions not involving transportation.

4. [W.28.2] This paragraph, like its predecessor, provides that procedural questions are to be determined by the law of the forum.

Article 34 — Arbitration

[W.32] This Article enables parties to a contract for carriage of cargo to agree at any time that disputes over cargo liability will be resolved by arbitration. Paragraph 1 requires such agreements to be in writing; paragraph 2 establishes that the Article 33 jurisdictional rules for claims under the Convention shall apply equally to arbitration; and paragraph 3 establishes that the Convention's other provisions also shall apply to the arbitration. Paragraph 4 nullifies any contractual terms that would limit the applicability of the Convention's provisions to an arbitration.

Article 35 — Limitation of Actions

[W.29.1 and W.29.2] Article 35 requires that any claim be brought within a two-year period computed from either the date of arrival, the date of intended arrival, or the date that carriage ceased. Questions as to calculation of the period of limitations are left to the court of the forum.

Article 36 — Successive Carriage

1. [W.30.1] This paragraph applies where carriage, which is considered by the parties to the contract to be a single operation, is to be performed by successive carriers, possibly under multiple contracts (i.e., an interline, as distinct from a code share, operation). It subjects all successive carriers performing a segment of an undivided international service (as defined in Article 1, paragraph 3) to the provisions of the Convention. Each carrier is considered to be a party to the contract of carriage with regard to that part of the carriage that it performs.

2. [W.30.2] Paragraph 2 provides that in the case of successive carriage, passengers, or those entitled to compensation through them, may only sue the carrier performing that portion of the carriage during which the accident or delay occurred, unless the first carrier has assumed liability for the entire journey.

3. [W.30.3] With respect to baggage, passengers may sue either the first carrier, the last carrier, or the carrier performing the carriage during which damages occurred. Consignors of cargo may sue the first carrier,

while the consignee may sue the last carrier. Either the consignor or the consignee may sue the carrier on which the damage occurred. Carriers are jointly and severally liable to the passenger, consignor, or consignee.

Article 37 — Right of Recourse against Third Parties

[MP4.XI] This Article clarifies that the Convention does not affect any right of recourse of a person liable for damages under this Convention against any other person.

Chapter IV

Combined Carriage

Article 38 — Combined Carriage

[W.31.1; W.31.2] Article 38 establishes that the Convention does not apply to modes of carriage other than carriage by air when they are combined with carriage by air, except as provided in Article 18(4), relating to carriage performed for the purposes of loading, delivery or transshipment and substituted surface transport performed without the consent of the consignor. Paragraph 2 allows terms of carriage for alternate modes of carriage to be inserted in the document for air carriage, provided the terms of the Convention are applied to the carriage by air. This would, for example, permit a cargo air carrier to provide in its air waybill that the same conditions and liability limits contained in the Convention also would govern surface portions of the through combined air/surface transport. Normally, such provisions would be enforceable, absent other law applicable to the through combined air/surface transport that is inconsistent with such provisions.

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Articles 39 through 48 derive from the provisions of the Guadalajara Convention, to which the United States is not a party. The provisions have been modified to reflect modern code share type operations.

Article 39 — Contracting Carrier -- Actual Carrier

[Guada. I.b-I.c] This Article defines the scope of Chapter V, which applies where a "contracting carrier" contracts with a passenger or consignor (or persons acting on their behalf) and a different carrier, the

"actual carrier," performs all or part of the carriage, as authorized by the contracting carrier. In the absence of proof to the contrary, the authorization by the contracting carrier is presumed. The Article draws a distinction between a "successive carrier" (see Art. 36 covering interline operations) and a contracting carrier/actual carrier operation, which includes code-share operations and operations where one carrier offers service using an aircraft and crew leased from another carrier. Under this Chapter, a passenger or consignor, or an agent thereof, could bring suit against the carrier performing the relevant carriage or against the carrier with which they contracted for the carriage. The Chapter does not constitute a basis for claims against any other carrier. For passengers or consignors whose contract is with the actual carrier, the same carrier is both the actual and contracting carrier; and the passenger or consignor would not, under this Chapter, have recourse against any other carrier, such as, for example, one with which the carrier had a code share agreement.

Article 40 — Respective Liability of Contracting and Actual Carriers

[Guada. II] Unless otherwise provided for in Chapter V, this Article establishes that the contracting carrier is subject to the rules of the Convention for the whole carriage for which it contracted and that the actual carrier is subject to the rules of the Convention only for the part of the carriage that it performs.

Article 41 — Mutual Liability

1. [Guada. III.1] This paragraph deems the acts and omissions of the actual carrier, including acts of its servants and agents within the scope of their employment, in relation to the carriage performed, to be those of the contracting carrier.

2. [Guada. III.2] Under this paragraph, the acts and omissions of the contracting carrier, including acts of its servants and agents within the scope of their employment, in relation to the carriage performed by the actual carrier, are deemed to be those of the actual carrier. The actual carrier will not, however, be subject to liability in excess of the amounts prescribed in Articles 21-24. Special agreements or waiver of limits or defenses, or a special declaration of value for baggage or cargo under the Convention, are not binding on the actual carrier unless agreed to by it.

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Article 42 — Addressee of Complaints and Instructions

[Guada. IV] This Article establishes that complaints and instructions will have equal effect whether given to the contracting carrier or the actual carrier, with the exception of a consignor's instructions regarding disposition of the cargo pursuant to Article 12, which must be addressed to the contracting carrier.

Article 43 — Servants and Agents

[Guada. V] Article 43 entitles servants and agents of a contracting or an actual carrier, when acting within the scope of their employment, to benefit from all conditions and limits of liability available under the Convention to the carrier they serve. An exception is made where the servant or agent acts in a manner that prevents the protections of the Convention from applying (i.e., Article 30 regarding willful misconduct of servants and agents).

Article 44 — Aggregation of Damages

[Guada. VI] This Article clarifies that double recovery from the actual and contracting carrier, including their servants and agents, is not permitted. It provides that total recovery from all sources within the scope of the Convention shall not exceed the highest amount that could be recovered against the contractual or actual carrier and that no recovery against either carrier shall exceed the limit applicable to that carrier.

Article 45 — Addressee of Claims

[Guada. VII] This Article allows an action for damages to be brought against the actual carrier and the contracting carrier either jointly or separately, at the option of the plaintiff. If the plaintiff brings an action against only one of them, then the defendant carrier may seek to have the remaining carrier joined in the proceedings according to the procedural requirements of the forum in which the action is brought.

Article 46 — Additional Jurisdiction

[Guada. VIII] This Article adds the actual carrier's domicile or principal place of business to the other bases of jurisdiction in Article 33 from which plaintiffs may choose for actions against either or both the contracting carrier and the actual carrier.

Article 47 — Invalidity of Contractual Provisions

[Guada. IX.1] Like Article 26, this Article provides that any contractual provision that tends to relieve a

carrier of liability or to fix a lower limit of liability than provided for under Chapter V of the Convention is null and void. However, notwithstanding the nullity of such provisions, the contract of carriage otherwise remains valid and subject to the provisions of this Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers

[Guada. X] This Article clarifies that the contracting and actual carriers are free to allocate liability as between themselves (*e.g.*, recourse or indemnification), so long as such arrangements are consistent with the rights provided for in Article 45 (the right of a plaintiff to sue either or both the contracting and actual carrier and the right of either carrier to join the other in a proceeding against one carrier).

Chapter VI

Other Provisions

Article 49 — Mandatory Application

[W.32] This Article provides that any contractual clauses or special agreements entered into before the relevant damage occurred by which the parties to the contract purport to infringe upon the terms of the Convention, whether by deciding the law to be applied or altering the rules regarding jurisdiction, are null and void.

Article 50 — Insurance

States Party to the Convention are required by this Article to require that their carriers are insured sufficiently to cover their potential liability under the Convention. Any State Party into which a carrier operates may require that carrier to provide evidence that the carrier maintains "adequate insurance covering [its] liability under this Convention." Thus, each State into which a carrier operates may independently determine the adequacy of that carrier's insurance for purposes of operations into that State.

Article 51 — Carriage Performed in Extraordinary Circumstances

[MP4.XIII] This Article exempts carriers from the documentation requirements of the Convention relating to passenger tickets, baggage checks, cargo air waybills, and other cargo receipts for carriage performed in

extraordinary circumstances outside the normal scope of the carrier's business.

Article 52 — Definition of Days

[W.35] This Article clarifies the ambiguity in the Warsaw Convention and its related instruments by specifying that "days" means "calendar" days, not "working" days.

Chapter VII

Final Clauses

Article 53 — Signature, Ratification and Entry into Force

1. Paragraph 1 provides that the Convention shall be open for signature by all States, whether or not they participated in the Conference, at the International Civil Aviation Organization Headquarters in Montreal until the Convention enters into force.

2. Paragraph 2 enables "Regional Economic Integration Organizations" (REIOs), defined as organizations constituted by sovereign States of a given region with competence in certain matters pertaining to the Convention (such as the European Union) and duly authorized to sign, ratify, accept, approve, or accede to the Convention, thereby becoming Parties to the Convention, but without the right to vote or to be counted for any purpose, such as the Convention's entry into force. REIOs also are not considered a "State" for jurisdictional or SDR valuation purposes.

3-8. Paragraphs 3 - 7 describe procedures for States to become parties to the Convention. The Convention will enter into force sixty days after thirty States have deposited their instruments of ratification, acceptance, approval or accession with ICAO, as the Depositary. For other States and Regional Economic Integration Organizations, the Convention enters into force sixty days following their deposit of an instrument of ratification, acceptance, approval or accession. Paragraph 8 specifies the duties of ICAO, as the Depositary, to notify all signatories and States Party to the Convention (including REIOs) of the dates of signature and deposits of instruments of ratification, acceptance, approval, or accession. ICAO must also notify signatories and States Party to the Convention of the date when the Convention enters into force, the date of the coming into force of any revision of liability limits, and any denunciation of the Convention.

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Article 54 — Denunciation

This Article allows States Party to the Convention, including Regional Economic Integration Organizations, to denounce the Convention by giving 180 days advance written notice to ICAO. The 180 days is counted as of the date on which ICAO receives such notification.

Article 55 — Relationship with other Warsaw Convention Instruments

1. Paragraph 1 establishes the supremacy of this Convention, as between States commonly party to this Convention, over the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and Montreal Protocols Nos. 1, 2, 3 and 4.

2. Paragraph 2 clarifies that the Convention prevails over the Warsaw Convention and its related instruments within the territory of a State that is a party to this Convention. This provision would be relevant where the origin and destination of a subject flight were within the territory of a single State, if there was an agreed stopping place outside that State.

Article 56 — States with more than one System of Law

States that have two or more territorial units in which differing legal systems apply are permitted to apply the Convention to all of their territories or only to one or more of them. States may declare their intent to limit the Convention's applicability when they sign, ratify, accept, approve, or accede to it. They may modify such a declaration through a subsequent declaration. Declarations must be notified to ICAO in writing and must specify to which territories the Convention shall apply. In cases where such a declaration has been made, the Convention's references to "national currency" and "national law" shall mean the currency and law of the relevant territory covered by the Convention. This provision was included at the request of the Peoples Republic of China and would, for example, permit China to ratify the new Convention with application to Hong Kong, without application of the Convention to mainland China. Because there is a single system of relevant law applicable to all U.S. territory, the United States could not make a declaration under this provision.

Article 57 — Reservations

This Article precludes reservations to the Convention, with two exceptions: States may declare that the Convention shall not apply: (1) to international air carriage conducted directly by State aircraft in an

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official, non-commercial capacity (otherwise possibly subject to the Convention under Article 2); and (2) to civil aircraft registered in, or leased by, a particular State and chartered on a planeload basis by that State's military authorities. These generally are the same reservations permitted respectively under the Warsaw Convention and The Hague Protocol, except that the definition of State aircraft operations has been narrowed.

CONVENTION

for the Unification of Certain Rules for International Carriage by Air

Done at Montreal on 28 May 1999

CONVENTION

pour l'unification de certaines règles relatives au transport aérien international

Faite à Montréal le 28 mai 1999

CONVENIO

para la unificación de ciertas reglas para el transporte aéreo internacional

Hecho en Montreal el 28 de mayo de 1999

КОНВЕНЦИЯ

для унификации некоторых правил международных воздушных перевозок

Совершена в Монреале 28 мая 1999 года

《统一国际航空运输某些规则的公约》

于 1999 年 5 月 28 日

在蒙特利尔签订

اتفاقيـــــة

توحيد بعض قواعد النقل الجوي الدولي

حررت في مونتريال في ٢٨ مايو/ أيار ١٩٩٩

1999

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
国际民用航空组织
منظمـــة الطيـــران المدنـــي الدولـــي

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ICAO OACI ИКАО

CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 — Scope of Application

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 transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State 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 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.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items

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

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

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

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

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 — Cargo

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

2. Any other means which preserves a record of the carriage to be performed may 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 cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 — Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(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 State 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 6 — Document Relating to the Nature of the Cargo

The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 — Description of Air Waybill

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 who shall hand it 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, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 — Documentation for Multiple Packages

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 cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 — Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 — Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, 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 its 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 it, 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 its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 — Evidentiary Value of Documentation

1. The air waybill or the cargo receipt 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 cargo receipt 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 or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

1. Subject to its liability to carry out all its 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. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 cargo receipt.

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 cannot be communicated with, the consignor resumes its right of disposition.

Article 13 — Delivery of the Cargo

1. Except when the consignor has exercised its 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 it, 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 — Enforcement of the Rights of Consignor and Consignee

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

Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties

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 cargo receipt.

Article 16 — Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities 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, its 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 and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers — Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted 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 its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway 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 transhipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay 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 it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing 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 carrier, its 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 such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and 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, including interest. 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.

Article 23 — Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention 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 judgement. The value of a national currency, in terms of the Special Drawing Right, of a State 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 judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. 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 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme 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.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 — Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval,

the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 — Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions

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

Article 27 — Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28 — Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are 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. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

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

3. Save in respect of the carriage of cargo, 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 31 — Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked 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 or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

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 checked 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 or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable

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 or her estate.

Article 33 — Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft,

or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conduc its business of carriage of passengers by air from premises leased or owned by the carrier itself or b another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, mad between carriers and relating to the provision of their joint services for carriage c passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of th passenger at the time of the accident. The nationality of the passenger shall not be th determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34 — Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo ma stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled b arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of th jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of ever arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewitl shall be null and void.

Article 35 — Limitation of Actions

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

2. The method of calculating that period shall be determined by the law of the court seised of th case.

Article 36 — Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargc is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which 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 37 — Right of Recourse against Third Parties

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

Combined Carriage

Article 38 — Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability

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

2. The acts and omissions of the contracting carrier and of its 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 amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions

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

Article 43 — Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44 — Aggregation of Damages

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 that person.

Article 45 — Addressee of Claims

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 46 — Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47 — Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter 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 Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Other Provisions

Article 49 — Mandatory Application

Any clause contained in the contract of 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.

Article 50 — Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 — Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in tl case of carriage performed in extraordinary circumstances outside the normal scope of a carrier business.

Article 52 — Definition of Days

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

Chapter VII

Final Clauses

Article 53 — Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participatin in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 Ma 1999, the Convention shall be open to all States for signature at the Headquarters of the Internationa Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of thi Article.

2. This Convention shall similarly be open for signature by Regional Economic Integratio Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation' means any organisation which is constituted by sovereign States of a given region which has competenc in respect of certain matters governed by this Convention and has been duly authorized to sign and t ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties' in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties' and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integratior Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 54.

Article 54 — Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 — Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) 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 called the Guadalajara Convention);

(d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by

both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 — States with more than one System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57 — Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

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

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

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