

PROTOCOL TO AMEND THE CONVENTION FOR UNIFI-
CATION OF CERTAIN RULES RELATING TO INTER-
NATIONAL CARRIAGE BY AIR

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL TO AMEND THE CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE
BY AIR SIGNED AT WARSAW ON OCTOBER 12, 1929, DONE AT
THE HAGUE, SEPTEMBER 28, 1955 (THE HAGUE PROTOCOL)



JULY 31, 2002.—The Protocol was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 31, 2002.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on October 12, 1929, done at The Hague September 28, 1955 (The Hague Protocol). 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 Hague Protocol.

The Warsaw Convention is the first in a series of treaties relating to international carriage by air. The Hague Protocol amended certain of the Warsaw Convention articles, including several affecting the rights of carriers of international air cargo. A recent court decision held that since the United States had ratified the Warsaw Convention but had not ratified The Hague Protocol, and the Republic of Korea had ratified The Hague Protocol but had not ratified the Warsaw Convention, there were no relevant treaty relations between the United States and Korea. This decision has created uncertainty within the air transportation industry regarding the scope of treaty relations between the United States and the 78 countries that are parties only to the Warsaw Convention and The Hague Protocol. Thus, U.S. carriers may not be able to rely on the provisions in the Protocol with respect to claims arising from the transportation or air cargo between the United States and those 78 countries. In addition to quickly affording U.S. carriers the protections of those provisions, ratification of the Protocol would establish relations with Korea and the five additional countries (El Salvador, Grenada, Lithuania, Monaco, and Swaziland) that are parties only to The Hague Protocol and to no other treaty on the subject.

A new Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (the "Montreal Convention") is pending on the Senate's Executive calendar (Treaty Doc. 106-45). I urge the Senate to give its advice and consent to that Convention, which will ultimately establish modern, uniform liability rules applicable to international air transport of passengers, cargo, and mail among its parties. But the incremental pace of achieving widespread adoption of the Montreal Convention should not be allowed to delay the benefits that ratification of The Hague Protocol would afford U.S. carriers of cargo to and from the 84 countries with which it would promptly enter into force.

I recommend that the Senate give early and favorable consideration to The Hague Protocol and that the Senate give its advice and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

THE SECRETARY OF STATE,
Washington, June 15, 2002.

The PRESIDENT.

I have the honor to submit to you the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on October 12, 1929, done at The Hague September 28, 1955 (“The Hague Protocol” or “the Protocol”). The Protocol was signed on behalf of the United States on June 28, 1956 and was submitted to the Senate for its advice and consent to ratification in 1959. It was returned to the President in 1967. The circumstances that precluded ratification and led to the return of the Protocol in 1967 have fundamentally changed, and I now recommend that it be re-transmitted to the Senate for its advice and consent to ratification.

BACKGROUND

Overview

The 1929 Warsaw Convention has been the subject of several amendments and unsuccessful attempts at amendments over the years. In 1955, The Hague Protocol, which doubled the passenger liability limits and simplified cargo documentation requirements, was adopted and was later ratified by most countries, but not by the United States. In 1971, the Guatemala Protocol again sought to raise the passenger limits, but was ratified by very few States and never entered into force. In 1975, the so-called Montreal Protocols (Nos. 1–4) were adopted. Of these four protocols, the United States is a party only to Montreal Protocol No. 4, which amended the Warsaw Convention as amended by The Hague Protocol, modifying the cargo provisions of that instrument without altering the passenger provisions. In 1999, a new Convention was adopted to eliminate in their entirety the passenger liability limits and modernize the other provisions of the Warsaw Convention and The Hague Protocol. The 1999 Convention is intended ultimately to replace the Warsaw Convention and its various amendments. The United States signed the 1999 Montreal Convention, and it was submitted for Senate advice and consent to ratification in September 2000.

1. The Warsaw Convention and The Hague Protocol

The Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw October 12, 1929 (the “Warsaw Convention”), provided limitations on liability and uniform liability rules applicable to international air transport of

passengers, cargo and mail. The Warsaw Convention was widely adopted, and the United States has been a party since 1934. The Convention contained a very low limit on the liability of carriers (approximately \$8,300 per passenger at that time) for death or injury to passengers in international air carrier accidents where the harm was not due to the carrier's willful misconduct. Efforts to increase this limit in the early 1950s led to The Hague Protocol, which doubled the passenger liability limit and made other technical improvements to the Convention, most notably in the area of cargo documentation.

President Eisenhower submitted The Hague Protocol to the Senate for its advice and consent to ratification on July 24, 1959. Because of concerns regarding the inadequacy of the new limit on passenger recoveries, the Administration sought enactment of a form of accident insurance legislation in conjunction with ratification of the Protocol. The proposed legislation would have required U.S. carriers to carry supplemental accident insurance policies for each passenger in international air travel to or from the United States covered by the Warsaw Convention. It fixed various levels of compensation based upon the type of injury sustained by the passenger, up to \$50,000. The insurance legislation package failed, and The Hague Protocol was eventually returned to the President in 1967.

2. The Montreal Inter-carrier Agreement (1966)

The failure of the insurance legislation package, coupled with increasing dissatisfaction with the liability limits in the Warsaw Convention, led the United States to submit a notice of denunciation of the Warsaw Convention in November, 1965. In 1966, the United States withdrew this notice of denunciation before it went into effect, in consideration of a private voluntary agreement, negotiated under the auspices of the International Air Transport Association (IATA), which 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, and in 1983 the Civil Aeronautics Board adopted regulations mandating participation (14 C.F.R. Part 203).

3. The 1975 Montreal Protocols

Although further diplomatic efforts were made to improve the Warsaw Convention during the 1960s and 1970s, continuing concerns regarding low passenger liability limits in part prevented the United States from adopting new amendments to the Convention. (See 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, Treaty Doc. 106-45, 106th Cong., 2nd Session, for more information regarding these diplomatic efforts and the development of the Warsaw Convention system.) In particular, four protocols were nego-

tiated at the 1975 diplomatic conference in Montreal. The first three of these protocols replaced the gold standard with the currency conversion formula based on “Special Drawing Rights” (hereinafter referred to as “SDRs”, an artificial “basket” currency developed by the International Monetary Fund for internal accounting purposes) for purposes of calculating all quantitative limitations on liability under the Warsaw Convention, The Hague Protocol, and a 1971 protocol to the Convention negotiated at Guatemala to which the United States did not become a party. (As of 1975, only two States had ratified the Guatemala Protocol.) The fourth protocol, 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 eliminated the outmoded cargo documentation provisions of the Warsaw Convention, thereby facilitating the application of electronic commerce to international air cargo. Although the United States signed Montreal Protocol No. 4, efforts to achieve Senate advice and consent to ratification of this protocol in the 1980s and early 1990s, in conjunction with one of the other protocols negotiated at Montreal that applied to passengers and adopted the SDR standard, were unsuccessful due in large part to concerns about the limits on passenger recoveries from the Guatemala Protocol that had been incorporated into the other protocol.

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

Recognizing the inadequacy of existing liability limits, air carriers reached agreement in 1996 on three inter-carrier agreements. In February 1997, the Department of Transportation approved two IATA and one Air Transport Association (“ATA”) agreements, all of which, at a minimum, waived the Warsaw Convention liability limits in their entirety for participating carriers, in effect superseding the 1996 Montreal Inter-carrier Agreement by which carriers had earlier waived the limits on liability up to \$75,000 per passenger.

As of March 6, 2002, 123 international carriers, representing more than ninety percent of the world’s air transport industry, had 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 SDRs (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 SDRs of proven damages. The ATA agreement, signed only by 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 SDRs of strict liability, airlines signatory to the ATA agreement also agree, subject to applicable law, that compensation for passenger injuries may be determined by reference to the law of the domicile or permanent residence of the passenger.

5. *Montreal Protocol No. 4 and Cargo Operations*

In the wake of the IATA and ATA Inter-carrier Agreements, the passenger liability limitations contained in the Warsaw Convention and the The Hague Protocol, although objectionable in principle to the United States, were no longer a significant obstacle because they were, as a practical matter, superseded in most cases by the IATA and ATA Inter-carrier Agreements, by which most major international scheduled carriers had waived those limits. The United States was thus in a position to modernize the rules relating to the air cargo industry. With the advice and consent of the Senate, the United States ratified Montreal Protocol No. 4 on December 4, 1998; it 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 complete detailed air waybills.

6. *The 1999 Montreal Convention*

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. 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. Work on a modernized convention to replace the fragmented Warsaw Convention system was completed at the May 1999 International Conference on Air Law in Montreal at which the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (the "1999 Montreal Convention"), was negotiated and opened for signature. The United States immediately signed the 1999 Montreal Convention. The President transmitted it to the Senate for advice and consent to ratification (Treaty Doc. 106-45) on September 6, 2000. This Convention was a success with respect to all key U.S. policy objectives, and once in force and widely ratified, will replace the Warsaw Convention and its patchwork of liability regimes, including the need for private voluntary agreements.

7. *Chubb & Son, Inc. v. Asiana Airlines*

A recent decision by the U.S. Court of Appeals for the Second Circuit in the case of *Chubb & Son, Inc. v. Asiana Airlines* (214 F.3d 301 (2d Cir. 2000), *cert. denied*, 121 S. Ct. 2459 (2001)) has highlighted the fragmentation of the Warsaw Convention system and raised uncertainties regarding the liability regime that applies to U.S. carriers in certain situations. The question presented in that case was whether the United States, a party to the Warsaw Convention but not the The Hague Protocol or to Montreal Protocol No. 4 at the time the dispute arose, had treaty relations with the Republic of Korea, a party only to The Hague Protocol. The court held that the United States did not have treaty relations with Korea under either The Hague Protocol or the Warsaw Convention, finding that Korea's adherence to The Hague Protocol did not make Korea a party to the unamended Warsaw Convention, to which the United States was a party.

Although the *Chubb* decision did not address the 1999 entry into force of Montreal Protocol No. 4 for the United States, it focused industry attention on the difficult question of whether the United States, by reason of its adherence to Montreal Protocol No. 4 became a party to The Hague Protocol and therefore entered into treaty relations under The Hague Protocol with other countries party to that instrument (but not to Montreal Protocol No. 4). U.S. carriers seek certainty regarding the applicability of the Warsaw Convention system in such situations.

If Montreal Protocol No. 4 does not create treaty relations under The Hague Protocol, the United States' treaty relations with the 78 countries that are parties to both the Warsaw Convention and The Hague Protocol, but not to Montreal Protocol No. 4, would be based on the Warsaw Convention unamended by any later protocol. Further, under these circumstances, the United States would have no treaty relations under the Warsaw Convention system with Korea and the five other countries which are parties only to The Hague Protocol (El Salvador, Grenada, Lithuania, Monaco, and Swaziland).

The Warsaw Convention of 1929 contains antiquated rules in the area of cargo documentation. Modern air cargo operations bear no resemblance to those of 1929. The cumbersome rules of the Warsaw Convention require much specific information on the air waybill that has no commercial significance today and is irrelevant to modern shippers. The requirements for such extensive documentation:

- Make international air cargo transactions time consuming and inefficient, and drive up their costs;
- Inhibit the free flow of international air commerce; and
- Serve as a barrier to use of electronic information exchanges.

Under the Warsaw Convention, U.S. cargo carriers must comply with commercially unnecessary and outmoded documentation rules or risk non-application by courts of the liability limits for cargo established in the Convention.

Ratification of The Hague Protocol would resolve this problem, ensuring U.S. carriers the benefits of The Hague Protocol's more modern rules relating to documentation, which are critical to the efficient movement of air cargo. It would also provide a clear basis for courts in determining the existence of treaty relations between the United States and foreign countries. Ratification of The Hague Protocol will secure for the United States the application of The Hague Protocol's more modern rules in relations with the 84 countries party to that instrument (but not to Montreal Protocol No. 4), pending the entry into force and widespread ratification of the 1999 Montreal Convention, which is currently awaiting Senate advice and consent.

Upon its entry into force, where applicable, the 1999 Montreal Convention will supersede the Warsaw Convention and all of its protocols, and as a practical matter the voluntary inter-carrier agreements, and will establish modern, uniform liability rules applicable to international air transport of passengers, cargo and mail. That Convention will enter into force when thirty states have consented to be bound by it. As of May 24, 2002, 18 states had de-

posited with ICAO, the depositary for the Convention, instruments indicating their consent to be bound.

THE PROTOCOL

The primary focus of The Hague Protocol at the time it was negotiated was the doubling of the passenger liability limit to approximately \$16,600. However, the 1966 Montreal Inter-carrier Agreement and later the IATA and ATA Inter-carrier Agreements, by which signatory carriers voluntarily waived such limits, have, as a practical matter in most cases, superseded this meager recovery limit. The Hague Protocol improved upon the 1929 Warsaw Convention in several other ways. The principal changes to the Warsaw Convention, many of which were later incorporated into Montreal Protocol No. 4, to which the United States became a party on March 4, 1999, are discussed below. A more detailed review of the provisions of The Hague Protocol follows.

Court Costs. Although the new liability limit for passenger death or injury included in The Hague Protocol is not applicable in light of the later inter-carrier agreements, a useful related provision of that article (22(4)) adds language to the Warsaw Convention permitting courts to award to the claimant, in accordance with domestic law, added amounts for court costs and other litigation expenses, including attorney's fees, with the proviso that such recovery will not apply where the amount of the damages awarded, excluding court costs, does not exceed any prompt settlement offer made by the carrier.

Documentation. The Hague Protocol streamlines the cumbersome documentation requirements of the Warsaw Convention, particularly in the area of cargo transportation. Article 8 of the Warsaw Convention requires that 17 separate categories of information be included on cargo air waybills. Since much of this information has no commercial significance, modern air waybill forms in use worldwide do not require this information. The Hague Protocol significantly reduces the information required to be included in air waybills to those categories related to the application of the Convention. Moreover, the Warsaw Convention provides that non-compliance with any of several of these documentation requirements would prohibit the carrier from enforcing the liability limits of the Convention. In contrast, The Hague Protocol provides that, with respect to cargo documentation requirements, only the failure to make out an air waybill prior to loading the cargo on board the aircraft, or to give notice as to the liability limitations, would preclude the application of carrier liability limits.

Willful Misconduct. The Warsaw Convention was written in French, with no authentic English text. Article 25 of the Warsaw Convention, as translated from the original French text in the United States, provided that a carrier's liability will not be limited when injury or death is caused by the "willful misconduct" of the carrier or its agent. However, other countries adopted different translations of this term that led to disparate interpretations, and, as a consequence, led to confusion among lawyers and judges attempting to apply the Warsaw Convention. The Hague Protocol replaced the legal standard with a description of the conduct itself that a jury would be able to understand. The Protocol revises the

provision to make the carrier's liability without limit when damage results from an act or omission of the carrier or its agent "done with intent to cause damage or recklessly and with knowledge that damage would probably result." This standard, similar in all substantive respects to the charge to the jury by a New York trial court in a well-known case (*Froman v. Pan American Airways*, Supreme Court of New York County, March 9, 1953), is recognized as the common law definition of willful misconduct and was not intended to modify the scope of the standard.

Article by Article Analysis

Articles I and II of The Hague Protocol amend the Warsaw Convention by making minor wording changes, without changing the scope of the Warsaw Convention's application.

Articles III through IX of The Hague Protocol address the documentation requirements for international air carriage of passengers, baggage and cargo, significantly streamlining the burdensome requirements of the Warsaw Convention. Article VI of The Hague Protocol narrows the information required to be included in cargo air waybills to include: the places of departure and destination; if the place of departure and destination are within the territory of the same Party with one or more agreed stopping places in the territory of another State, at least one such stopping place; and notice that if the transportation involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may apply and in most cases limits the liability of carriers. Articles III and IV of The Hague Protocol make similar amendments to the documentation requirements for passenger tickets and baggage checks, respectively.

Article V and Articles VII through IX of the Protocol modify the cargo documentation requirements of the Warsaw Convention in other ways. For example, Article V requires that carriers sign air waybills prior to the loading of the cargo on board the aircraft, rather than upon acceptance of the cargo, as originally required by the Warsaw Convention. This new language comports with the modern practice of cargo carriage, including express delivery service. Article VII reduces the circumstances under which non-compliance with documentation requirements would preclude the application of carrier liability limits to cases in which, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or where the air waybill omits notice of the possible application of the Warsaw Convention, including potential limits on carrier liability.

Articles X through XV of The Hague Protocol address the liability of carriers. The Hague Protocol does not amend Articles 17, 18 or 19 of the Warsaw Convention, which define the conditions required for carrier liability for harm to passengers, baggage and cargo, as well as damage occasioned by delay in the transportation of passengers, baggage or cargo. Article X of The Hague Protocol, like Montreal Protocol No. 4, deletes Article 20, paragraph 2 of the Warsaw Convention, which excludes carriers from liability for damage to baggage or cargo if they prove that the damage was caused by an error in piloting, in the handling of the aircraft, or in naviga-

tion and that, in all other respects, the carrier and its agents had taken all necessary measures to avoid the damage.

Article XI of the Protocol amends Article 22 of the Warsaw Convention by doubling the limit on carrier liability for death or injury to passengers. This limit was in effect superseded by the 1966 Montreal Inter-carrier Agreement and the later IATA and ATA Inter-carrier Agreements, by which the signatory carriers voluntarily waived such limits. Article XI also adds a provision stating that the weight to be used in calculating the liability limit for loss, damage or delay of part of checked baggage or cargo is the total weight of the package or packages concerned, except that when the loss, damage or delay affects the value of other packages covered by the same baggage check or air waybill, the total weight of the affected package or packages will also be considered.

Finally, Article XI adds a new paragraph 4 permitting courts to award, in accordance with their own law, all or part of the court costs and other litigation expenses, including attorney's fees, incurred by the plaintiff, with the proviso that damages awarded, excluding court costs and litigation expenses, not exceed the amount of any settlement offer made in writing by the carrier within six months of the occurrence causing the damage or before the commencement of the action, whichever is later.

Article XII of The Hague Protocol adds a new paragraph to Article 23 of the Convention. Article 23 prohibits carriers from contracting to reduce their liability under the Convention. The new paragraph 2, however, permits carriers to enter into such agreements regarding loss or damage resulting from the inherent defect, quality or vice of cargo.

Article XIII of the Protocol replaces the term "willful misconduct" with a description of the conduct itself, providing that the limits on carriers' liability will not apply "if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."

Article XIV of The Hague Protocol adds a new Article 25A to the Convention regarding claims against servants and agents. Paragraph 1 of the Article clarifies that servants or agents may avail themselves of the same liability limitations to which the carrier is entitled under the Convention, if they prove that they were acting within the scope of their employment. Paragraph 2 clarifies that the Convention's limits apply to the aggregate of recoveries against the carrier and its servants and agents. Paragraph 3 applies the willful misconduct exception to the Convention's limits of liability with respect to servants and agents and in the aggregation of claims. (The provisions of Article 25A are reflected in Articles 30 and 43 of the 1999 Montreal Convention, which carry over the basic principle that liability for conduct within the scope of employment remains subject to the rules of that Convention, regardless of whether the conduct was intentional or reckless. However, as with Montreal Protocol No. 4, to which the United States is a party, the willful misconduct exception to the liability limits that is contained

in Articles 30 and 43 of the 1999 Montreal Convention does not apply to cargo claims.)

Article XV of The Hague Protocol extends the time permitted under the Warsaw Convention for lodging complaints regarding baggage or cargo, increasing the period from three days from the date of receipt to seven days in the case of damage to baggage; from seven days from the date of receipt to fourteen days in the case of damage to cargo; and from fourteen days from the date on which the baggage or cargo was placed at the person's disposal to twenty-one days in the case of delay.

Article XVI of the Hague Protocol replaces Article 34 of the Convention, which entirely excluded experimental or extraordinary air carriage from the Convention, with a provision which exempts from Articles 3 through 9 (relating to documentation) carriage in extraordinary circumstances outside the normal scope of the carrier's business.

Article XVII adds new Article 40A to the Convention, defining the expressions "High Contracting Party" and "territory" for purposes of the Convention.

Article XVIII provides that the Warsaw Convention as amended by The Hague Protocol will apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination of the carriage are situated either in the territories of two parties to the Protocol or within the territory of a single party in the Protocol with an agreed stopping place in another State (whether or not that State is a party to the Protocol). Because the United States is already a party to Montreal Protocol No. 4, which supersedes The Hague Protocol where applicable, the Warsaw Convention as amended by The Hague Protocol will apply to one-way international air carriage between the United States and the territory of any country that is a party to The Hague Protocol but not to Montreal Protocol No. 4. (There are currently 84 such countries.) Round-trip international air carriage beginning and ending in the United States with an agreed stopping place in any other country would continue to be governed by Montreal Protocol No. 4.

Article XIX through XXVII contain the final clauses of the Protocol, a number of which address the relationship between the Protocol and the Warsaw Convention. Article XIX provides that, "as between the parties to The Hague Protocol, the Convention and the Protocol will be read and interpreted together as one single instrument and shall be known as the 'Warsaw Convention as amended at The Hague, 1955.'" Article XXI, paragraph 2 and Article XXIII, paragraph 2, provide that ratification or adherence to the Protocol by any State that is not a party to the Warsaw Convention will have the effect of adherence to the Warsaw Convention as amended by The Hague Protocol. Therefore, states becoming a party to the Protocol do not have to separately ratify or adhere to the Warsaw Convention in order to be bound by the Warsaw Convention as amended by The Hague Protocol. A recent decision by the U.S. Court of Appeals for the Second Circuit held that these provisions did not mean that ratification or adherence to the Protocol had the effect of adherence to the unamended Warsaw Convention for countries not already party to that Convention. *Chubb v. Asiana*, 214

F.3d at 310. Lastly, Article XXIV, paragraph 3 of the Protocol provides that, as between the parties to the Protocol, denunciation by a party to the Warsaw Convention will not constitute denunciation of the Convention as amended by the Protocol.

Article XXIII, paragraph 3 provides that deposit of an instrument of adherence with the depositary will take effect ninety days after the deposit.

Article XXVI precludes reservations except that States may declare that the Convention as amended by the Protocol will not apply to "the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities." Consistent with past practice of the United States under Montreal Protocol No. 4, I recommend that the United States not make this declaration.

CONCLUSION

Together with the Department of State, the Departments of Defense, Justice, Commerce and Transportation all concur in the submission of the Protocol to the Senate for its advice and consent to ratification.

Ratification of The Hague Protocol will ensure the benefits of that instrument, most importantly more streamlined and efficient cargo documentation rules, for the United States pending the entry into force and widespread ratification of the new 1999 Montreal Convention. For this reason, U.S. carriers strongly urge ratification of this Protocol. I therefore recommend that you transmit the Protocol to the Senate at an early date with the recommendation that the Protocol be approved at the earliest possible time.

Respectfully submitted,

COLIN L. POWELL.

PROTOCOL TO AMEND THE CONVENTION FOR THE UNIFICATION OF
CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR,
SIGNED AT WARSAW ON 12 OCTOBER 1929

The GOVERNMENTS UNDERSIGNED

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

CHAPTER I

AMENDMENTS TO THE CONVENTION

Article I

In Article 1 of the Convention—

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

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

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

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

Article II

In Article 2 of the Convention—

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

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

Article III

In Article 3 of the Convention—

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

“1. In respect of the carriage of passengers a ticket shall be delivered containing:

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

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

c) a notice to the effect that, if the passenger’s journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.”

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

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

Article IV

In Article 4 of the Convention—

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

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

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

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

c) a notice to the effect that; if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.”

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

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

Article V

In Article 6 of the Convention—

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

“3. The carrier shall sign prior to the loading of the cargo on board the aircraft.”

Article VI

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

“The air waybill shall contain:

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

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

c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

Article VII

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

“If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by Article

8, paragraph *c*), the carrier shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.”

Article VIII

In Article 10 of the Convention—

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

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

Article IX

To Article 15 of the Convention—

The following paragraph shall be added:—

“3. Nothing in this Convention prevents the issue of a negotiable air waybill.”

Article X

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

Article XI

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

“Article 22

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

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

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

the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

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

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

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

Article XII

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

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

Article XIII

In Article 25 of the Convention—

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

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

Article XIV

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

“Article 25A

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

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

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

Article XV

In Article 26 of the Convention—

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

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

Article XVI

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

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

Article XVII

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

“Article 40 A

1. In Article 37, paragraph 2 and Article 40, paragraph 1, the expression *High Contracting Party* shall mean *State*. In all other cases, the expression *High Contracting Party* shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

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

CHAPTER II

SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

Article XVIII

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

CHAPTER III

FINAL CLAUSES

Article XIX

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

Article XX

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

Article XXI

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

Article XXII

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

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

Article XXIII

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

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

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

Article XXIV

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

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

3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

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

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

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

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

Article XXVI

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

Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or

this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization:

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

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

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

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

[Translation]

German Federal Republic:

Dr. OTTO RIESE	28. 9. 55
GERD RINCK	28. 9. 55
Dr. J. HUBENER	28. 9. 55

Belgium:

VAN DER STRATEN WAILLET

Brazil:

TRAJANO FURTADO REIS	28. 9. 55
CLAUDIO GANNS	28-9-55

Egypt:

DIAEDDINE SALEH	28/9/1955
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United States of America:

[JOSEPH E. JACOBS	June 28, 1956]
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France:

J. P. GARNIER	
ANDRÉ GARNAULT	28 September 1955

Greece:

N. ANISSAS	28 September 1955
CONSTANTINE CHR. HADJIDIMOULAS	28 September 1955

[Translation]—Continued

Hungarian People's Republic:	
V. ZALKA	28 September 1955
Ireland:	
TIMOTHY J. O'DRISCOLL	28. IX. '55
Israel:	
<i>ad referendum</i>	
I. J. MINTZ	28. 9. 1955
D. BAR NES	28. 9. 1955
Italy:	
ANTONIO AMBROSINI	
Laos:	
P. SAVANN	28-9-55
BOURZAY	28. 9. 55
Liechtenstein	
FRÉDÉRIC SCHAEERER	28. 9. 55
Luxembourg:	
VICTOR BODSON	28. 9. 55
PIERRE HAMER	28. 9. 55
Mexico:	
ENRIQUE M. LOAEZA	28-9-55
A. F. RIGALT	28-9-55
Norway:	
EDVIN ALTEN	28-9-55
Netherlands:	
GOEDHUS	28-9-55
Philippines:	
SIMEON R. ROXAS	28/9/55
DANIEL MC. GOMEZ	28/9/55
Polish People's Republic:	
T. FINDZINSKI	28/9-55
K. PIERZYNSKI	28/9-55
S. MINORSKI	28/9/55
Portugal:	
<i>ad referendum</i>	
FERNANDO QUARTIN DE OLIVEIRA	
BASTOS	28/9/55
Rumanian People's Republic:	
M. COCIU	28.IX.1955
L. BADULESCU	28.IX.1955
El Salvador:	
P. A. DELGADO B.	28 IX. 1955
M. RAMÍREZ	28.IX.1955
FR. PÁRRAGA	28/IX/55
Sweden:	
KARL SIDENBLADH	28.9.1955
Switzerland:	
FRITZ STALDER	28.9.1955
Republic of Czechoslovakia:	
FR. NOVÁK	28.9.1955
V. BAUER	28.9.1955
Union of Soviet Socialist Republics:	
V. DANILITCHEV	28-IX-1955

[Translation]—Continued

Venezuela:

LUIS CHAFARDET-URBINA

28/9/55

RAMON CARMONA

28-9-55

V. J. DELASCIO

28-9-55

Certified Copy Conforming with the Original.
Warsaw, the *16 March 1956*.

M. Lachs
Prof. Dr. M. LACHS

*The Chief of the Juridical and Treaty Division of the Ministry of
Foreign Affairs of the People's Republic of Poland.*

