



Republic of Namibia  
Annotated Statutes

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## Carriage by Air Act 17 of 1946 (SA)

(SA GG 3649)

brought into force in South Africa and South West Africa  
on 22 March 1955 by SA Proc. No. 65 of 1955 (SA GG 5434)  
(see definition of “Union” and later “Republic” in section 1 of the Act)

**APPLICABILITY TO SOUTH WEST AFRICA:** Section 1 originally stated “In this Act, ‘Union’ includes the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay.” It was amended by Act 5 of 1964 to remove the reference to “Union” and to define “Republic” to include “any territory in respect of which Parliament is competent to legislate”.

**TRANSFER TO SOUTH WEST AFRICA:** The administration of this Act was transferred to South West Africa by the Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978, dated 15 March 1978. There were only two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Carriage by Air Amendment Act 81 of 1979* (RSA GG 6529) and the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) – neither of which was made expressly applicable to South West Africa.

Section 3(1)(a) of the transfer proclamation excluded section 5 of the Act (which deals with the ratification of amendments to the Warsaw Convention by the State President) from the operation of section 3(1) of the General Proclamation, meaning that the administration of this section was not transferred to South West Africa.

Section 3(2) of the transfer proclamation excluded the reference to “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and specified that it should be read to include South West Africa as well as South Africa.

as amended by

**Carriage by Air Amendment Act 5 of 1964 (RSA) (RSA GG 728)**

came into force on date of publication: 21 February 1964

**RSA Proclamation R.294 of 1967 (RSA GG 1892)**

under the authority of section 5(2) of the Act;

applies the Hague Protocol to “the Republic”

from 17 December 1974 (section 2(1) of the Proclamation)

**RSA Proclamation R.93 of 1974 (RSA GG 4276)**

under the authority of section 5(2) of the Act;

applies the Guadalajara Convention to “the Republic”

from 4 April 1974 (section 2(1) of the Proclamation)

**Carriage by Air Amendment Act 14 of 1992 (GG 430)**

came into force on date of publication: 3 July 1992

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**ACT**

**Carriage by Air Act 17 of 1946 (SA)**

**To give effect to a Convention for the unification of certain rules relating to international carriage by air; to make provision for applying the rules contained in the said Convention, subject to exceptions, adaptations and modifications, to carriage by air which is not international carriage within the meaning of the Convention; and for matters incidental thereto.**

*(Afrikaans Text signed by the Governor-General)  
(Assented to 8th May, 1946)*

## ARRANGEMENT OF SECTIONS

1. Definitions
2. Ratification of Convention
3. Provisions of Convention to have force of law
4. Provisions as to actions against High Contracting Parties who undertake carriage by air
5. Power to carry out Convention
6. Provision for applying Act and Convention to carriage by air which is not international
7. Rules of Court
8. Regulations
9. Short title

### SCHEDULE

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

**[Act 5 of 1964 amends the Act throughout to substitute "Republic" for "Union".  
Act 14 of 1992 amends the Act throughout to substitute "Namibia" for "the Republic".]**

### Definitions

1. "Minister" means the Minister of Works, Transport and Communication.

**[Section 1 originally read as follows:**

**"In this Act, 'Union' includes the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay."**

**Section 1 was substituted by Act 5 of 1964 to read as follows:**

**"Minister" means the Minister of Transport;**

**"Republic" includes any territory in respect of which Parliament is competent to legislate."**

**Act 14 of 1992 amended the definition of "Minister" and deleted the definition of "Republic".]**

### Ratification of Convention

2. (1) The International Convention for the unification of certain rules relating to international carriage by air, signed at Warsaw on the twelfth day of October, 1929 (hereinafter referred to as the Convention), is hereby ratified and confirmed.

- (2) A translation of the Convention is set out in the Schedule to this Act.

### Provisions of Convention to have force of law

3. (1) The provisions of the Convention shall, so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, and subject to the provisions of this Act, have the force of law in Namibia in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing the carriage.

(2) The Minister may from time to time by notice in the *Gazette* declare who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention, and any such notice shall, except in so far as it has been varied or superseded by a subsequent notice, be conclusive evidence of the matters so declared.

**[subsection (2) amended by Act 5 of 1964 to substitute  
"Minister" for "Governor-General", and "notice" for "proclamation"]**

(3) Any reference in the said Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to the territories subject to his sovereignty, suzerainty, mandate or authority, in respect of which he is a party.

(4) Not more than one action shall be brought in Namibia to enforce liability under Article seventeen of the said Schedule in respect of the death of any one passenger, and every such action, by whomsoever brought, shall be for the benefit of all such persons entitled to sue for damages in respect of the death of that passenger as either are domiciled in Namibia or, if not so domiciled, have indicated their desire to take the benefit of the action.

(5) Subject to the provisions of sub-section (6) the amount recovered in any such action shall be divided between the successful claimants in such manner as the court may deem just.

(6) The court in which any such action is brought may, at any stage of the proceedings -

- (i) issue a rule calling upon interested parties to join in the action within a specified period;
- (ii) make such order as appears to the court to be just and equitable in view of the provisions of the said Schedule limiting the liability of a carrier and of any proceedings which have been or are likely to be commenced outside Namibia in respect of the death of the passenger in question.

(7) Any sum in francs mentioned in Article twenty-two of the said Schedule shall, for the purposes of any action against a carrier, be converted into currency of Namibia in the manner determined by the Minister and notified by notice in the *Gazette*.

**[Subsection (7) amended by Act 5 of 1964 and by Act 14 of 1992.**

**Section 2(2) of Act 14 of 1992 provides the following transitional provision:**

**"(2) A manner determined before the commencement of this Act [Act 14 of 1992, which commenced on 3 July 1992] under subsection (7) of section 3 of the principal Act [Act 17 of 1946] shall apply in Namibia as if it were determined by the Minister of Works, Transport and Communication on the date of commencement of this Act [3 July 1992] and notified in the *Gazette* under the said subsection (7) of section 3, as amended by subsection (1) of this section."**

### Provisions as to actions against High Contracting Parties who undertake carriage by air

**Carriage by Air Act 17 of 1946 (SA)**

4. Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any action brought in a court in Namibia in accordance with the provisions of Article twenty-eight of the Schedule to this Act, to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court: Provided that nothing in this section shall authorize the issue of execution against the property of any High Contracting Party.

**Power to carry out Convention**

5. (1) The President may by proclamation in the *Gazette* make such incidental or supplementary provisions as appear to him or her necessary for carrying out the Convention or any amendment thereof or addition thereto ratified or adhered or acceded to on behalf of Namibia, and for giving due effect thereto or to any of the provisions thereof.

(2) For the purposes of this Act, any amendments or additions so ratified or adhered or acceded to, shall, subject to any provisions so made in terms of subsection (1), be deemed to be incorporated in the Schedule to this Act.

[Section 5 is substituted by Act 14 of 1992.

For historical purposes, it may be helpful to note how section 5 stood immediately prior to its substitution (as amended by Act 5 of 1964):

**“Ratification of amendments of and additions to Convention**

5. (1) The State President may do all things necessary to ratify or adhere or accede to or cause to be ratified or adhered or acceded to on behalf of the Republic any amendments of or additions to the Convention which may from time to time be made, and by proclamation in the *Gazette* declare that the amendments or additions so ratified or adhered or acceded to shall be observed and have the force of law in the Republic: Provided that copies of any amendments or additions so ratified or adhered or acceded to or proclaimed shall be laid upon the Tables of both Houses of Parliament within fourteen days after their publication in the *Gazette* if Parliament be then in session or, if Parliament be not then in session, within fourteen days after the commencement of its next ensuing ordinary session.

(1)*bis* Any proclamation under sub-section (1) may provide for such exceptions and contain such incidental or supplementary provisions as may be necessary to give due effect to the relevant amendments of or additions to the Convention or to ensure that the international obligations of the Republic will be fulfilled.

(2) For the purposes of this Act, any amendments or additions so ratified, adhered or acceded to and proclaimed shall subject to any exceptions or provisions referred to in sub-section (1)*bis* be deemed to be incorporated in the Schedule to this Act.”]

**Provision for applying Act and Convention to carriage by air which is not international**

6. The Minister may, by notice in the *Gazette* apply any of the provisions of the Schedule to this Act and any provision of section *three* to such carriage by air, not being international carriage by air as defined in the said Schedule, as may be specified in the notice, subject to such exceptions, adaptations and modifications, if any, as may be so specified.

[Section 6 is amended by Act 5 of 1964 to substitute “Minister” for “Governor-General”, and “notice” for “proclamation”.]

**Rules of Court**

7. Rules of court may be made in the manner provided in section 39 of the High Court Act, 1990 (Act 16 of 1990), as to -

- (a) the manner in which any action to enforce liability under Article seventeen of the Schedule to this Act, or under the provisions of that Article as applied under section *six*, is to be commenced and carried out, and the intervention by and addition of any party to any such action; and

- (b) the manner in which any action under the said Schedule against any High Contracting Party is to be commenced and carried out.

[section 7 amended by Act 5 of 1964 and by Act 14 of 1992]

## Regulations

8. The Minister may make regulations prescribing the procedure to be followed by a carrier in connection with the payment, before action has been brought, of claims under Article seventeen of the Schedule to this Act, in respect of the death of any passenger, and all other matters which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

[Section 8 is amended by Act 5 of 1964 to substitute “Minister” for “Governor-General”.]

## Short title

9. This Act shall be called the Carriage by Air Act, 1946, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Governor-General in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require. However, by this time the Act had already come into operation on a date fixed by the Governor-General.]

## Schedule

[The Schedule is amended and supplemented pursuant to section 5(2) (as that subsection stood prior to its substitution in 1992) by RSA Proc. R.294 of 1967 (RSA GG 1892) and by RSA Proc. R.93 of 1974 (RSA GG 4276). The text of both of these Proclamations is reproduced below.

**Warsaw Convention:** The Warsaw Convention is formally known as the Convention for the Unification of Certain Rules Relating to International Carriage by Air. The official text is in French only. A reliable English translation is available at <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20137/v137.pdf>.

**Hague Protocol:** The Hague Protocol is formally known as 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. The amendments to the Warsaw Convention contained in the Hague Protocol reproduced in the Schedule to RSA Proc. R.294 of 1967 have been incorporated into the text of the Convention in the Schedule to the Act, as directed by section 5(2) of the Act (prior to its substitution by Act 14 of 1992). The remainder of the provisions of the Hague Protocol are inserted below the Warsaw Convention, as being supplementary to it. The Hague Protocol, unlike the Warsaw Convention, had official texts in English, French and Spanish. A reliable English version of the Hague Protocol is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20478/volume-478-I-6943-English.pdf>.

**Guadalajara Convention:** The Guadalajara Convention is formally known as 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. The Guadalajara Convention is reproduced in the Schedule to RSA Proc. R.93 of 1974. It is inserted below the Warsaw Convention in this Schedule, as being supplementary to it. The Guadalajara Convention, unlike the Warsaw Convention, had official texts in English, French and Spanish. A reliable English version of the Guadalajara Convention is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20500/volume-500-7305-English.pdf>.

It should be noted that Namibia ratified the **Montreal Convention**, formally known as the Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999,

**Carriage by Air Act 17 of 1946 (SA)**

on 27 September 2001 (source: the depositary, the International Civil Aviation Organization), and it became binding on Namibia on 4 November 2003 when it entered into force internationally.

**The Montreal Convention supersedes and replaces the Warsaw Convention for those states that are parties to both systems, in terms of Article 55 of the Montreal Convention, which reads as follows:**

- “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.”

**Thus, the international conventions presented in this Schedule have only limited current relevance.**

**In the *Government Gazette*, this Convention is presented in a smaller typeface than that used for the Act, but it is reproduced here in the same typeface used in the Act. Minor discrepancies between the *Gazette* and the international sources in respect of format, spelling and punctuation have not been annotated. The numbering formats used in the Convention differ from those in the Schedule to the original Act (which used numbers inside brackets for the paragraphs within each Article) and the Schedule to RSA Proc. R.294 of 1967 which amends the Convention (which does not place the paragraph numbers inside brackets). The latter format is used here, as it corresponds with the internal cross-references in the Convention.**

“PROCLAMATION

*by the Acting State President of the Republic of South Africa.*

No. R. 294, 1967.]

AMENDMENT TO THE WARSAW CONVENTION

Under the powers vested in me by section 5 of the Carriage By Air Act, 1946 (Act No. 17 of 1946), as amended, I do declare as follows: -

1. In this Proclamation, unless the context otherwise indicates -
  - “Act” means the Carriage by Air Act, 1946 (Act No. 17 of 1946), as amended;
  - “Hague Protocol” means the Protocol to amend the Warsaw Convention, opened for signature at the Hague on the twenty-eighth day of September 1955, the English text of which, together with an Afrikaans translation thereof, is set forth in the Schedule to this Proclamation;
  - “Warsaw Convention” means the Convention of which a translation in English and Afrikaans is set forth in the Schedule to the Act;
  - “Warsaw Convention as amended at the Hague, 1955” means the Warsaw Convention as amended by the Hague Protocol.
2. (1) As from the Seventeenth day of December 1967, the provisions of the Hague Protocol shall, in so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, have the force of law in the Republic, and as from that date the provisions of the Warsaw Convention as amended at The Hague, 1955, shall, subject to the provisions of the Act, apply in relation to any carriage by air which is “international carriage” within the meaning of Article 1 of the said Convention, and irrespective of the nationality of the aircraft performing that carriage: Provided that the

**Carriage by Air Act 17 of 1946 (SA)**

places of departure and destination referred to in that Article are situated either in the territories of two High Contracting Parties to the Hague Protocol or within the territory of a single High Contracting Party to that Protocol, with an agreed stopping place within the territory of another State.\*

\* The purpose of the proviso is to give effect to Article XVIII of the Protocol.

(2) This section shall not apply so as to affect rights or liabilities arising out of an occurrence which took place prior to the coming into force of this section.

3. Nothing in section 2 of this Proclamation contained shall be deemed to affect the application, in accordance with the Act, of the Warsaw Convention in relation to any carriage by air in which, according to the contract made by 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 to the said Convention, of whom neither or only one is a party to the Hague Protocol, or within the territory of a single High Contracting Party to the said Convention (but not to the said Protocol) if there is an agreed stopping place within the territory of another State, whether or not that State is a High Contracting Party to the said Convention.

4. The provisions of paragraph 1 of Article 40A of the Warsaw Convention as amended at The Hague, 1955, shall not be construed as extending any reference in that Convention to the territory of a High Contracting Party (except such as is a reference to the territory of any State, whether a High Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this Twentieth day of June, One thousand Nine hundred and Sixty-Seven.

J. F. NAUDÉ, Acting State President.  
By Order of the Acting State President-in-Council.  
B. J. SCHOEMAN.”

“PROCLAMATION  
*by the State President of the Republic of  
South Africa*

No. R. 93, 1974

ADDITIONS TO THE WARSAW CONVENTION

Under the powers vested in me by section 5 of the Carriage By Air Act, 1946 (Act 17 of 1946), as amended, I do declare as follows:

1. In this Proclamation, unless the context otherwise indicates -

“Act” means the Carriage By Air Act, 1946 (Act 17 of 1946), as amended;

“Guadalajara Convention” means the Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, signed at Guadalajara on the 18th day of September 1961, which Convention was acceded to and confirmed on behalf of the Republic of South Africa on the 4th day of January 1974, the English text of which, together with an Afrikaans translation thereof, is set forth in the Schedule to this Proclamation;

“Hague Protocol” means the Protocol, the English text of which, together with an Afrikaans translation thereof, is set forth in the Schedule to Proclamation R. 294, 1967;

“Warsaw Convention” means the Convention of which a translation in English and Afrikaans is set forth in the Schedule to the Act;

“Warsaw Convention as amended at the Hague, 1955,” means the Warsaw Convention as amended by the Hague Protocol.

**Carriage by Air Act 17 of 1946 (SA)**

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2. (1) As from the 4th day of April 1974, the provisions of the Guadalajara Convention shall, in so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, and subject to the provisions of the Act, be observed and have the force of law in the Republic in relation to any carriage by air to which the said Convention applies, irrespective of the nationality of the aircraft performing the carriage: Provided that the places of departure and destination are situated either in the territories of two parties to the said Convention or within the territory of a single party to the said Convention, with an agreed stopping place in the territory of another State.

(2) This section shall not apply so as to affect rights or liabilities arising out of an occurrence which took place prior to the coming into force of this section.

3. Nothing contained in section 2 of this Proclamation shall be deemed to affect the application, in accordance with the Act and Proclamation R. 294, 1967, of, the Warsaw Convention or of the Hague Protocol to any carriage by air undertaken in terms of any contract, one of the parties to which is not bound by the requirements of the Guadalajara Convention.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-Seventh day of April, One thousand Nine hundred and Seventy-four.

J. J. FOUCHÉ State President.  
By Order of the State President-in-Council:  
B. J. SCHOEMAN.”]

**CONVENTION****FOR THE UNIFICATION OF CERTAIN RULES RELATING TO  
INTERNATIONAL CARRIAGE BY AIR.****[The Warsaw Convention includes the following preamble:**

“Recognising the desirability of regulating in a uniform manner the conditions of international carriage by air, so far as may concern the documents of carriage and the responsibility of the carrier,

Have, for this purpose, appointed their respective Plenipotentiaries who, being duly authorised, have concluded and signed the following Convention:”.]

**CHAPTER I****SCOPE-DEFINITIONS***Article 1*

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

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

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a

series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

**[paragraphs 2 and 3 substituted by RSA Proc. R.294 of 1967.]**

#### *Article 2*

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. This Convention shall not apply to carriage of mail and postal packages.

**[paragraph 2 substituted by RSA Proc. R.294 of 1967]**

### CHAPTER II

#### DOCUMENTS OF CARRIAGE

##### SECTION 1 – PASSENGER TICKET

#### *Article 3*

1. In respect of the carriage of passengers a ticket shall be delivered containing -
  - (a) an indication of the places of departure and destination;
  - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
  - (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.
2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not effect 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.

**[Paragraphs 1 and 2 are substituted by RSA Proc. R.294 of 1967.  
The word "affect" which appears in the Hague Protocol was erroneously changed to "effect" in RSA Proc. R.294 of 1967, as reproduced above in paragraph 2.]**

##### SECTION 2 – LUGGAGE TICKET

#### *Article 4*

1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain -
  - (a) an indication of the places of departure and destination;

**Carriage by Air Act 17 of 1946 (SA)**

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- (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 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.

2. The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention.

Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check [unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph 1 (c)] does not include the notice required by paragraph 1(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.

[Article 4 substituted by RSA Proc. R.294 of 1967]

### SECTION 3 – AIR CONSIGNMENT NOTE

#### *Article 5*

1. Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an “air consignment note”; every consignor has the right to require the carrier to accept this document.

[The phrase “make out and over” which appears in the Warsaw Convention is erroneously changed to “make out and hand over” in Act 17 of 1946, as reproduced above in paragraph 1.]

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

#### *Article 6*

1. The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

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

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

[paragraph 3 substituted by RSA Proc. R.294 of 1967]

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

**Carriage by Air Act 17 of 1946 (SA)**

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

*Article 7*

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

*Article 8*

The air waybill shall contain:-

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

[The word "An" was erroneously capitalized in RSA Proc. R.294 of 1967, as reproduced above; it was not capitalized in the Hague Protocol.]

(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 8 substituted by RSA Proc. R.294 of 1967]

*Article 9*

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

[Article 9 substituted by RSA Proc. R.294 of 1967]

*Article 10*

1. The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

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.

[paragraph 2 substituted by RSA Proc. R.294 of 1967]

*Article 11*

1. The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

2. The statements in the air consignment note relating to the weight, dimensions and packing of the goods, 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 goods do

not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

#### *Article 12*

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

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

3. If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

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 consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

#### *Article 13*

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

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

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

#### *Article 14*

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

#### *Article 15*

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

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

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

[paragraph 3 inserted by RSA Proc. R.294 of 1967]

#### *Article 16*

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

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

### CHAPTER III

#### LIABILITY OF THE CARRIER

#### *Article 17*

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

#### *Article 18*

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

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

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

#### *Article 19*

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

#### *Article 20*

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

2.

[paragraph 2 deleted by RSA Proc. R.294 of 1967]

*Article 21*

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

*Article 22*

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

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

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

[The word "affects" which appears in the Hague Protocol was erroneously changed to "effects" in RSA Proc. R.294 of 1967, as reproduced above in subparagraph (b).]

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 22 substituted by RSA Proc. R.294 of 1967]***Article 23*

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

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

**[paragraph 2 inserted by RSA Proc. R.294 of 1967]***Article 24*

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

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

*Article 25*

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

**[Article 25 substituted by RSA Proc. R.294 of 1967]***Article 25A*

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

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

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

**[Article 25A inserted by RSA Proc. R.294 of 1967]***Article 26*

1. Receipt by the person entitled to delivery of luggage or goods without complaint is *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of carriage.

**Carriage by Air Act 17 of 1946 (SA)**

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

[paragraph 2 substituted by RSA Proc. R.294 of 1967]

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

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

*Article 27*

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

*Article 28*

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

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

*Article 29*

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

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

*Article 30*

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

[The word "subjected" which appears in the Warsaw Convention was changed to "subject" in Act 17 of 1946, as reproduced above in paragraph 1.]

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

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

#### CHAPTER IV

#### PROVISIONS RELATING TO COMBINED CARRIAGE

##### *Article 31*

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

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

#### CHAPTER V

#### GENERAL AND FINAL PROVISIONS

##### *Article 32*

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

##### *Article 33*

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

##### *Article 34*

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

**[Article 34 substituted by RSA Proc. R.294 of 1967]**

##### *Article 35*

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

##### *Article 36*

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy

shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

*Article 37*

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

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

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

*Article 38*

1. This Convention shall, after it has come into force, remain open for accession by any State.

2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.

3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

*Article 39*

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

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

*Article 40*

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

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

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

any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

*Article 40A*

1. In Article 37, paragraph 2 and Article 40, paragraph 1, the expression “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.

[Article 34 substituted by RSA Proc. R.294 of 1967]

*Article 41*

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

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

NOTE: Names not printed.

ADDITIONAL PROTOCOL

*(With reference to Article 2)*

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

NOTE: Names not printed.

[The following text is the Hague Protocol to the Warsaw Convention,  
as reproduced in RSA Proc. R.294 of 1967.]

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

CHAPTER 1  
AMENDMENTS TO THE CONVENTION

[The amendments have been incorporated into the text of the Convention  
as it appears in the Schedule to this Act.]

CHAPTER II  
SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

*Article XVIII*

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

CHAPTER III  
FINAL CLAUSES

*Article XIX*

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

*Article XX*

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

*Article XXI*

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

*Article XXII*

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

*Article XXIII*

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.

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

*Article XXIV*

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

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

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

*Article XXV*

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

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

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

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

*Article XXVI*

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

*Article XXVII*

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

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;

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

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

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

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

[Names not printed.]

[The following is the Guadalajara Convention,  
as reproduced in RSA Proc. R.93 of 1974.]

## CONVENTION

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

[The Guadalajara Convention includes the following preamble:

"The States signatory to the present Convention

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

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

Have agreed as follows:"]

#### *Article I*

In this Convention -

(a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw

**Carriage by Air Act 17 of 1946 (SA)**

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Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;

(b) “contracting carrier” means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

(c) “actual carrier” means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

*Article II*

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

*Article III*

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

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

*Article IV*

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

*Article V*

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

*Article VI*

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could

**Carriage by Air Act 17 of 1946 (SA)**

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be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

*Article VII*

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

**[The phrase “or the contracting carrier” which appears in the Guadalajara Convention was erroneously changed to “of the contracting carrier” in RSA Proc. R.93 of 1974, as reproduced above.]**

*Article VIII*

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

*Article IX*

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

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

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

*Article X*

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

*Article XI*

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

*Article XII*

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

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

*Article XIII*

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the 90th day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each State ratifying thereafter on the 90th day after the deposit of its instrument of ratification.

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

*Article XIV*

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

2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the 90th day after the date of such deposit.

*Article XV*

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

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

*Article XVI*

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

2. The Convention shall, 90 days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.

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

*Article XVII*

No reservation may be made to this Convention.

*Article XVIII*

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organisation and to all States members of the United Nations or of any of the Specialised Agencies -

**Carriage by Air Act 17 of 1946 (SA)**

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

In witness whereof the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

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

**[The word “the” was erroneously deleted from the phrase “in the English, French and Spanish languages” which appears in the Guadalajara Convention in RSA Proc. R. 93 of 1974, as reproduced above.]**

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

*Note.*-Names not printed.