

[ENGLISH TEXT — TEXTE ANGLAIS]

MONTREAL PROTOCOL NO. 4 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

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 as amended by the Protocol done at The Hague on 28 September 1955,

Have agreed as follows:

CHAPTER I. AMENDMENTS TO THE CONVENTION

Article I

The Convention which the provisions of the present Chapter modify is the Warsaw Convention as amended at The Hague in 1955.

Article II

In Article 2 of the Convention-- paragraph 2 shall be deleted and replaced by the following:

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

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

Article III

In Chapter II of the Convention-- Section III (Articles 5 to 16) shall be deleted and replaced by the following:

"Section III. Documentation relating to cargo

Article 5

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

2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph 2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

Article 6

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee";

it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

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

Article 7

When there is more than one package:

a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used.

Article 8

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

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

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

c) an indication of the weight of the consignment.

Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 5.

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

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

Article 11

1. The air waybill or the receipt for the cargo is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

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

Article 12

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

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

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the

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

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

Article 13

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

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

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

Article 14

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

Article 15

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

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

Article 16

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

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

Article IV

Article 18 of the Convention shall be deleted and replaced by the following:

"Article 18

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

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

3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

- a) inherent defect, quality or vice of that cargo;
- b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
- c) an act of war or an armed conflict;
- d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

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

Article V

Article 20 of the Convention shall be deleted and replaced by the following:

"Article 20

In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures."

Article VI

Article 21 of the Convention shall be deleted and replaced by the following:

"Article 21

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

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

Article VII

In Article 22 of the Convention

a) in paragraph 2 a) the words "and of cargo" shall be deleted.

b) after paragraph 2 a) the following paragraph shall be inserted:

"b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination."

c) paragraph 2 b) shall be designated as paragraph 2 c).

d) after paragraph 5 the following paragraph shall be inserted:

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

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

Article VIII

Article 24 of the Convention shall be deleted and replaced by the following:

"Article 24

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

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

Article IX

Article 25 of the Convention shall be deleted and replaced by the following:

"Article 25

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

Article X

In Article 25 A of the Convention--

paragraph 3 shall be deleted and replaced by the following:

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

Article XI

After Article 30 of the Convention, the following Article shall be inserted:

"Article 30 A

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

Article XII

Article 33 of the Convention shall be deleted and replaced by the following:

"Article 33

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

Article XIII

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

"Article 34

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

CHAPTER II. SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED

Article XIV

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

CHAPTER III. FINAL CLAUSES

Article XV

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975.

Article XVI

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

Article XVII

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

2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975.

3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article XVIII

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

on the ninetieth day after the deposit of its instrument of ratification.

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

Article XIX

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

2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975.

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

Article XX

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

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

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

Article XXI

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

a) a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975, shall not apply to the carriage of persons, baggage and cargo for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities; and

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

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

Article XXII

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

Article XXIII

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

Article XXIV

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

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

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

Article XXV

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article XVIII at the Ministry for Foreign Affairs of the Polish People's Republic.

The International Civil Aviation Organization shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

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

Done at Montreal on the twenty-fifth day of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.