

ANEXO II – WARSAW CONVENTION

The Warsaw Convention

A transcription of the text of Warsaw Convention (Convention for Unification of Certain Rules relating to International Carriage by Air) signed at Warsaw, 12th October 1929 and amended by Hague Protocol, 28th September 1955.

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 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 single operation, whether it had been agreed upon under the form of a single contract or of series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

ARTICLE 2

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

CHAPTER II **DOCUMENTS OF CARRIAGE** **SECTION I**

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 of departure, the Warsaw Convention may be applicable and that 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;

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

SECTION II **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;
 - b) If the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
 - c) A notice to the effect that, if the carriage involves an ultimate destination or stop in a country 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 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 provision 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 to the provisions of Article 22, paragraph 2.

SECTION III **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.
2. The absence, the 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 governed by the rules of this Convention.

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ARTICLE 6

1. The air consignment note shall be made out by the consignor in three 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 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.
4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.
5. If, at the request of the consignor, the carrier makes out 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;
- 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 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 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.

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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 any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

ARTICLE 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 statement 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, checked by him in the presence of the consignor, or related to the apparent condition of 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.

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ARTICLE 13

1. Except in the circumstances set out in the preceding Articles, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over 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 duty of the carrier to give notice to the consignee as soon as 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 Article 12 and 13, each in his own name, when he is acting in his own interest or 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 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.

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 documents, unless the damage is due to the fault of the carrier or his agents.
2. The carrier is under no obligation to enquire the correctness or sufficiency of such information or documents.

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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 damaged so sustained took place on board the aircraft or in the course of embarking or disembarking.

ARTICLE 18

1. The carrier is liable for damage sustained in the event of destruction or loss of, or 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 passenger, luggage or goods.

ARTICLE 20

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.

ARTICLE 21

If the carriers 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.

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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 seized 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 or registered baggage 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 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 the such package shall also be taken into consideration in determining the limit of liability.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.
4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court cross 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 this 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 65 U21/D32 milligrams of gold with a fineness of nine hundred thousandths. 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 judgement.

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ARTICLE 23

1. Any provision tending to relieve the carrier of his 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 provision of this Convention.
2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

ARTICLE 24

1. In the 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 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 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 a 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 provision of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage result 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.

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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.
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 latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.
3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing dispatched 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 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.

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ARTICLE 30

1. In 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 subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier 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 GENERAL AND FINAL PROVISIONS

ARTICLE 31

1. If the case of combined carriage performed 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 in 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 Article 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.

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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 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 High Contracting Parties.
2. As soon as this Convention as this Convention shall have been ratified by five of the 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 of the ninetieth day after 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 Parties the date on which this Convention comes into force as well as the date of de 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 at once inform the Government of each of the High Contracting Parties.
2. Denunciation shall take effect six months after the notification, and shall operate only as regards the Party who shall have proceeded to denunciation.

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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 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 Contract 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 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. For this purpose he will communicate with the Government of the French Republic which will take the necessary measures to make preparation for such Conference.