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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**CARRIAGE OF GOODS BY AIR:
A GUIDE TO THE INTERNATIONAL LEGAL FRAMEWORK**

Report by the UNCTAD secretariat

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Background and introduction

1. UNCTAD XI, held in São Paulo in June 2004, requested the secretariat to continue "to undertake research and analysis with a view to assisting developing countries to establish an appropriate framework for policy action in the area of transport"¹. The Conference further requested, that UNCTAD "should examine [...] regulatory regimes relating to transport and trade facilitation", *inter alia*, "to assist traders to take advantage of transport opportunities."² Furthermore, the Commission on Enterprise, Business Facilitation and Development, at its tenth session, reaffirming the recommendations adopted at its ninth and eighth session, recommended that the UNCTAD secretariat should "monitor and analyse issues and developments relating to international transport and trade facilitation and their implications for developing countries, with a focus on the special situation of landlocked and transit developing countries and least developed countries, and the particular needs of their SMEs."³

2. One important recent development in the field of international transport law was the entry into force, on 4 November 2003, of the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*,⁴ the so-called *Montreal Convention 1999*. A degree of international uniformity of laws governing transportation by air had been achieved as early as in 1929, when the so-called *Warsaw Convention*⁵ was adopted. However, a number of subsequent amendments to that Convention had led to an increasingly complex international legal framework with different international legal instruments co-existing with one another. The *Montreal Convention 1999* represents the most modern international convention in the field. It consolidates the various earlier legal instruments known as the "Warsaw-system conventions" into a single text and provides the basis for genuine uniformity of laws governing transportation by air.

3. However, although the Convention has already attracted 70 Contracting States, it continues, for the foreseeable future, to co-exist at the international level with the earlier Warsaw-system conventions. As a result, the international legal framework for carriage by air remains complex. Even for States which have adopted the *Montreal Convention 1999*, the Warsaw-system conventions may be applicable in relation to trade with some or most of their trading partners. Thus, effective national implementation - and application - of the various international air law conventions remains a necessity. For traders, the complex international legal framework and consequent lack of transparency of regulation makes it difficult to identify the substantive rules applicable to a given contract or claim, thus increasing legal costs.

4. Air transportation is increasingly gaining in importance, both in terms of its contribution to global trade and in terms of its development dimension. Although in terms of weight, air carriage accounts for only around 2% of all cargo moved at the global level, in

¹ Report of the United Nations Conference on Trade and Development (UNCTAD) on its eleventh session, São Paulo consensus para. 59, www.unctad.org

² *Ibid.*, at para. 107.

³ Report of the Commission on Enterprise, Business Facilitation and Development on its tenth session, para. 3 (a) of the agreed recommendations, www.unctad.org.

⁴ Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Montreal on 28 May 1999.

⁵ Convention for the Unification of Certain Rules relating to International Carriage by Air, Signed at Warsaw on 12 October 1929.

terms of value, estimates on the proportion of air transport range from 33%⁶ to 40%⁷ of the world trade in merchandise. In addition to high-value and high-tech manufactured goods and components, which account for much of the value/weight ratio of global air transport and the potential for further growth in this area,⁸ air carriage is often the preferred method of transport for perishables and other time-critical cargo.⁹ In fact, freight transportation by air is growing steadily, with projected annual growth rates for 2004-2023 of around 6% globally.¹⁰ Air freight growth is exceptionally strong in trade involving the Asia-Pacific region, in particular China and India, but Middle Eastern air freight is also expected to show strong growth over the coming years;¹¹ air trade between Latin America and North America is forecast to grow at the global average rate, with faster growth in the interregional trade between North America and Central America. For Africa, where many of the world's developing nations are located, Europe is the largest air trade partner and it is expected that this market is going to expand further over the medium term.¹²

5. The growing proportion of high-value, time sensitive products traversing national boundaries by air creates increased opportunities for trade and economic development. High-tech manufacturers and other time critical shippers are locating at sites around or accessible to major airports; this provides a significant impetus for substantial investment in airport regions and the respective nations as a whole. Since jobs in time critical industries tend to be higher paying than country averages, they raise the income levels of the population, as well.¹³ For developing countries, including in particular landlocked developing countries, the potential development opportunities associated with air carriage are considerable. Air transport contributes to improved living standards in many developing countries by expanding opportunities to participate in the global economy. It is particularly important for landlocked and developing island countries, and for countries whose main exports are high value goods or perishables.¹⁴

⁶ See *Liberalisation of Air Cargo Transport*, Report by the Organisation for Economic Co-operation and Development (OECD), 2 May 2002, DSTI/DOT(2002)1/REV1 p. 3, www.oecd.org.

⁷ *Air Cargo: Engine for Economic Development*, study prepared by John D. Kasarda and Jonathan Green for TIACA (The International Air Cargo Association) Air Cargo Forum, Bilbao, Spain, 15 September 2004, p. 1, www.tiaca.org. Also, *The Impact of the Express Delivery Industry on the Global Economy*, Report by Oxford Economic Forecasting, March 2005, p. 7.

⁸ See, for instance, Boeing World Cargo Forecast 2004/2005, p.9 (www.boeing.com), where it is noted: "... a potential airborne cargo market can [based on previous research of trade patterns] be determined from the tonnage of traded goods (regardless of mode) with value that exceeds US\$ 16". See also Airbus Global Market Forecast 2004-2023, p. 58 (www.airbus.com), where it is stated: "although high-tech goods from Asia to North America and Europe represent 40% of total exports in tonnage, they also account for nearly 75% in value. High-tech exports from China to Europe and North America transported by air have grown steadily from a 25% share in value in 1995, to 60% of today's total".

⁹ See data and indicators for the different regions in Boeing World Cargo Forecast 2004/2005.

¹⁰ Boeing World Cargo Forecast 2004/2005, p. 4; IATA Passenger and Freight Forecast 2005-2009, Executive Summary, available at www.iata.org. See also Airbus Global Market Forecast 2004-2023, p. 62, with detailed sub-regional freight traffic forecasts at p. 70 et. seq.

¹¹ *Ibid.*

¹² *Ibid.* See in particular IATA Passenger and Freight Forecast 2005-2009, Executive Summary, where it is stated: "Airfreight flows between Africa and Europe amount to about 70% of total flows into and out of the region and are thus of considerable importance. Over the medium-term, an enlarged European Union will provide a further market for African goods, and should fuel growth, providing the region can retain reasonable political and economic stability".

¹³ See also *Air Cargo: Engine for Economic Development*, p.1.

¹⁴ See also *The economic and social benefits of air transport*, Air Transport Action Group (ATAG), September 2005, p.15 (available at www.atag.org) where, by way of example, it is reported that in Kenya, exports by air of

6. Given the increasing economic importance of air transport and its inherent development potential, modernization, transparency and easy accessibility of laws and regulation in this field are key, in particular for developing countries.

7. It is against this background, that this report has been prepared to assist officials and traders in developing countries and in countries with economies in transition in their understanding of the existing legal framework governing the transport of goods by air and to facilitate effective national implementation and application of international conventions in the field.

8. This report comprises two parts. Part A provides a general overview of the international legal liability framework applicable to international carriage of goods by air by considering the relevant international agreements on the subject in chronological order. It also highlights some practical aspects, which are important for the effective national implementation of these international agreements. Part B provides a brief guide to the key substantive provisions of the international legal liability regime, treated in thematic order. In both parts, specific emphasis is placed on the carriage of goods by air, but where appropriate for purposes of comparison, some reference is made to passenger carriage. Annex 1 provides a simplified comparative table of limitation of liability and exceptions to liability, including in relation to passenger carriage; Annex 2 provides, for ease of reference, a consolidated list of Contracting States to the various international legal instruments; Annex 3 reproduces the standard IATA air waybill specifications and conditions of contract.

agricultural products, such as fresh vegetables and cut flowers already constitute one of the country's largest industries and the second biggest earner of foreign exchange. Other examples highlighted by ATAG include Colombia, where air transport reportedly accounts for an estimated 16% of the value of merchandise exports, particularly cut flowers, vegetables and clothing and Ghana, where a World Bank sponsored Trade and Investment Gateway Project aims to attract export-oriented investors and to place the country as a hub in West Africa for passenger and trade flows through measures, such as deregulation of the air transport industry and investments in Kotoka International Airport.

A. GENERAL OVERVIEW OF THE INTERNATIONAL LIABILITY FRAMEWORK

I. The Warsaw System of Conventions

1. Warsaw Convention 1929

9. The first international air convention, the "*Convention for the Unification of Certain Rules relating to International Carriage by Air*", was signed in Warsaw in 1929 (hereinafter referred to as "Warsaw Convention 1929"). As its title suggests, the convention is aimed at unifying the rules on international carriage by air. According to Article 1 (1) the **Warsaw Convention 1929** "*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.*"¹⁵

10. The Warsaw Convention 1929 was negotiated at a time when commercial aviation was at its infancy. Two major considerations shaped the liability regime laid down by the Warsaw Convention 1929. On the one hand, it was seen necessary to protect air carriers (which at the time were mainly state-owned) from open-ended liability in case of damage to or loss of cargo or baggage and injury or death of passengers.¹⁶ On the other hand, shippers and passengers needed to be reassured that if something went wrong they would have an effective remedy against the carrier and be compensated.

11. The Warsaw Convention 1929 entered into force on 13 February 1933 and has been adopted by 151 States.¹⁷ To date, it is thought to be one of the most widely adopted international conventions.

12. The Warsaw Convention 1929 provides a comprehensive framework of a unified liability regime applicable to claims arising out of international air transport, irrespective of the domicile of the parties, the place of loss or injury, or the venue of the trial. The major areas in which the Warsaw Convention 1929 achieves uniformity may be summarised as follows.

13. The Convention:

- standardises particulars to be included in the documents of carriage;
- creates a penalty for non-compliance with the particulars to be included in the documents of carriage, (carrier loses monetary cap limiting his liability);

¹⁵ The terms "*aircraft*" and "*reward*" in Article 1 (1) are not defined in the Warsaw Convention 1929. However, they have been interpreted to mean that international carriage for any kind of remuneration, whether monetary or other, will be covered. See, Shawcross & Beaumont, *Air Law*, 4th ed., London, 2000, Part VII: Carriage by Air, (hereinafter referred to as "*Shawcross, Air Law*"), paras. 363 to 365. Note that all paragraph references cited from Shawcross, *Air Law* relate to Part VII: Carriage by Air.

¹⁶ The expressions "cargo" or "goods", "baggage" or "luggage", and "passengers" or "persons" respectively are used inter-changeably throughout this report.

¹⁷ Status of ratification of the various international conventions and protocols referred to in this report, as at 1 June 2006. For ease of reference, a consolidated list of Contracting States is appended to this report (Annex 2). Authoritative information on the entry into force and status of ratification of the different international conventions and protocols, as well as on any declarations and reservations, may be obtained from the International Civil Aviation Organization (ICAO), www.icao.org.

- sets out rules whereby the claimant does not need to prove the fault of the carrier, or his agents, in respect of a loss;
- specifies a limited number of defences to liability for the benefit of the air carrier;
- fixes a monetary cap limiting the liability of the air carrier;
- defines the circumstances in which the carrier may lose the benefit of the monetary cap limiting his liability;
- sets out rules as to time limitation and jurisdiction;
- provides for the exclusive application and mandatory effect of the rules laid down.

14. The Warsaw Convention 1929 provides for a monetary cap limiting the carrier's liability in relation to both passengers and their luggage, and cargo. At the same time, it creates a presumption of fault on the part of the carrier. In other words the claimant does not need to adduce evidence to prove that the carrier was at fault. The burden is on the carrier to prove that he was not at fault by using one of the limited defences available to him. Under certain specified circumstances, the conduct of the carrier is considered so reprehensible that the claimant may "break" the monetary cap limiting the carrier's liability, with the result that the carrier loses the right to the limitation and is liable in full. However, such circumstances are strictly limited. The Warsaw Convention 1929 also contains specific rules, which determine who a claimant may sue (i.e. the appropriate party), when (i.e. the time limitation within which a claimant may bring an action) and where (i.e. before which national courts a claimant may bring an action).

15. The provisions of the Warsaw Convention 1929 are of exclusive application and have mandatory effect. This means that in circumstances where the Warsaw Convention 1929 applies to a particular claim, a claimant can only rely on the liability rules of the Warsaw Convention 1929 and may not rely on any other relevant national law.¹⁸ Moreover, the carrier, in the contract of carriage, may not seek to exclude, or limit his liability, or otherwise derogate from the mandatory rules laid down in the Warsaw Convention 1929.

16. In this context, it is worth noting that the contract of carriage is not individually negotiated between the parties, but is carried out on the carrier's standard terms of contract as typically contained in or evidenced by a transport document issued by the carrier. Therefore, one of the underlying aims of the Warsaw Convention 1929 - and this is common to all existing international liability regimes in the field of transport - is to reduce the potential for abuse in the context of contracts of adhesion, used where parties with unequal bargaining power contract with one another. By establishing minimum standards of liability, which apply mandatorily and may not be contractually modified, international liability regimes seek to ensure the protection of cargo interests with little bargaining power against unfair contract terms unilaterally introduced by the carrier in its standard terms of contract.¹⁹

17. As was stated above, one of the major provisions of the Warsaw Convention 1929 concerns the monetary cap limiting the air carrier's liability. This was fixed by reference to the monetary unit of the French or Poincaré franc, which was in circulation in France at the time

¹⁸ See the U.S. Supreme Court's decision in *El Al Israel Airlines Ltd. v. Tsui Yuan Tseng* (1999) 525 US 155 and *Abnett v. British Airways Plc. (Scotland)*, *Sidhu v. British Airways Plc.* [1997] A.C. 430; [1997] 2 Lloyd's Rep. 76, a decision by the U.K. House of Lords.

¹⁹ Note that contractual increase of a carrier's liability is permitted in all international transport conventions, with the exception of the CMR 1956, the international road carriage regime, which does not permit any contractual derogation (cf. Art. 41 CMR).

and consisted of a specified quantity of gold defined by the Warsaw Convention 1929²⁰ (hereinafter referred to as "gold franc"). The monetary cap is 125,000 gold francs (about US\$ 5,000 at the rates of exchange prevailing in 1929)²¹ for passenger injury or death, 250 gold francs (about US\$ 10) per kilogram for loss or damage to cargo or registered baggage and 5,000 gold francs (about US\$ 200) per passenger for unregistered baggage.²²

18. However, dissatisfaction in some countries with the level of the monetary limitation of the air carrier's liability, especially for passengers, and the erosion of the value of the gold franc standard after the Second World War, led to calls for change. The Warsaw Convention 1929 contains a provision for its review through convening of an international conference.²³ On this basis, a series of revisions of the Warsaw Convention 1929 have been agreed, with the result that there are several amended versions of the Warsaw Convention 1929, in addition to the original Warsaw Convention 1929.

2. Hague Protocol 1955

19. In 1955, a protocol was adopted in The Hague to amend the Warsaw Convention 1929 (hereinafter referred to as "Hague Protocol 1955").²⁴ The **Hague Protocol 1955** doubles the monetary cap on the carrier's liability in respect of passenger injury or death from 125,000 to 250,000 gold francs. However, the Hague Protocol 1955 does not change the financial limitation of the carrier's liability in respect of cargo and registered baggage (which remains at 250 gold francs), or in respect of unregistered baggage (which remains at 5,000 gold francs per passenger).

20. Some other innovations of the Hague Protocol 1955 include the following. The Protocol:

- simplifies the particulars to be included in the documents of carriage, however, maintains the penalty for non-compliance with the particulars to be included in the documents of carriage (carrier loses monetary cap limiting his liability);
- specifies that legal costs are excluded from a claimant's award of damages;²⁵
- introduces an incentive for out of court settlements.²⁶

21. The Hague Protocol 1955 expressly provides that if a State becomes a Contracting State²⁷ to the Hague Protocol 1955, but is not a Contracting State to the Warsaw Convention

²⁰ Art. 22 (4) Warsaw Convention 1929.

²¹ Shawcross, *Air Law*, para. 106.

²² Art. 22 (1)-(3) Warsaw Convention 1929.

²³ Art. 41 Warsaw Convention 1929.

²⁴ 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.

²⁵ Art. XI Hague Protocol 1955.

²⁶ *Ibid.* It provides that the court may make an award that the claimant's costs be paid by the carrier, unless the amount awarded to the claimant in damages, excluding costs, does not exceed the amount the carrier offered in writing to settle to the claimant within six months from the date of the occurrence causing the damage, or within six months before the commencement of the action, if that is later. This provision provides an incentive to the carrier to settle a claim to avoid litigation expenses and other costs.

²⁷ In Art. 1 (2) Warsaw Convention 1929, the expression "*High Contracting Party*" is used, which is not defined in the Warsaw Convention 1929. It is defined in Art. XVII Hague Protocol 1955 as "*a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective*". The term "*Contracting State*" will be used throughout this report.

1929, this "*shall have the effect of adherence*" to the "*Warsaw Convention as amended at The Hague, 1955*"²⁸ (hereinafter referred to as "Warsaw-Hague Convention 1955").

22. The Hague Protocol 1955 entered into force on 1 August 1963 and has been adopted by 136 States.

3. Guadalajara Convention 1961

23. The large increase in charter and other flights, brought about the practice of code-share agreements, whereby a "*contracting*" carrier would substitute his own performance of part of the carriage with that of another carrier, without the agreement of the consignor. The "*actual*" carrier, however, is not a party to the contract of carriage with the consignor. In order to extend the contracting carrier's rights and liabilities under the Warsaw Convention 1929 to any non-contracting "*actual carrier*", a further convention was adopted in 1961 in Guadalajara²⁹ (hereinafter referred to as "Guadalajara Convention 1961").

24. The **Guadalajara Convention 1961** is supplementary to either the Warsaw Convention 1929, or the Warsaw-Hague Convention 1955, depending on which one is applicable in a given case.³⁰ The Guadalajara Convention 1961 entered into force on 1 May 1964 and has been adopted by 84 States.

4. Guatemala City Protocol 1971

25. In 1971, agreement was reached in Guatemala City on a protocol to amend the Warsaw-Hague Convention 1955.³¹ The Guatemala City Protocol 1971 further raises the monetary cap on the carrier's liability in respect of passengers and their luggage, but does not change the relevant provisions in relation to cargo.³² The Protocol has, however, never entered into force and will therefore not be further considered here.

5. Montreal Additional Protocols Numbers 1, 2, and 3 of 1975

26. As a result of developments at the International Monetary Fund (IMF) which led to the demonetisation of gold and prevented the member States from setting official prices to gold in relation to currency,³³ three additional protocols were drawn up in Montreal, known as the **Montreal Additional Protocols Numbers 1, 2, and 3 of 1975** (hereinafter referred to as

²⁸ Arts. XXI (2), and XXIII (2) Hague Protocol 1955. Also, see Art. XIX Hague Protocol 1955.

²⁹ 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 in Guadalajara on 18 September 1961.

³⁰ Art. I (a) Guadalajara Convention 1961. Note that the Convention may also be applicable in relation to a contract governed by the Warsaw Convention 1929 or Warsaw-Hague Convention 1955 as later amended by one of the Montreal Additional Protocols.

³¹ 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.

³² For injury or death of passengers the carrier's liability is capped at 1,500,000 gold francs, for delay in the carriage of passengers the carrier's liability is capped at 62,500 gold francs and, for loss, damage or delay in respect of passenger luggage, the carrier's liability is capped at 15,000 gold francs per passenger.

³³ See further Shawcross, *Air Law*, para. 109.

"MAP 1 1975", "MAP 2 1975" and "MAP 3 1975", respectively, and as "MAP 1 to 3 1975, collectively).³⁴

27. MAP 1 to 3 1975 replace the monetary unit of account when referring to the monetary cap on the air carrier's liability from the gold franc to the Special Drawing Right (SDR) established by the IMF and calculated on the basis of a basket of international currencies.³⁵ MAP 1 to 3 1975 amend the following international air conventions:

- MAP 1 1975 amends the Warsaw Convention 1929³⁶ (hereinafter referred to as "Warsaw-MAP 1 Convention 1975");³⁷
- MAP 2 1975 amends the Warsaw-Hague Convention 1955³⁸ (hereinafter referred to as "Warsaw-Hague-MAP 2 Convention 1975");³⁹ and
- MAP 3 1975 amends the Warsaw-Hague-Guatemala Convention 1971.⁴⁰ However, neither MAP 3 1975, nor the Warsaw-Hague-Guatemala Convention 1971, have entered into force, as they have not been adopted by the required number of States.

28. Once again, in all cases ratification of or accession to one of the Montreal protocols has the effect of adherence to the relevant convention.⁴¹ MAP 1 1975 entered into force on 15 February 1996 and has been adopted by 48 States. MAP 2 1975 entered into force on 15 February 1996 and has been adopted by 49 States.

6. Montreal Additional Protocol Number 4 of 1975

29. The most significant changes in relation to the liability regime for the carriage of *cargo* were introduced by a further amendment of the Warsaw-Hague Convention 1955, also drawn up in Montreal and known as the **Montreal Additional Protocol Number 4 of 1975** (hereinafter referred to as "MAP 4 1975").⁴² By way of a mechanism similar to that used in the other protocols, ratification of or accession to MAP 4 1975 has the effect of adherence to the Warsaw-Hague Convention 1955 as amended by MAP 4 1975 (hereinafter referred to as "Warsaw-Hague-MAP 4 Convention 1975").⁴³

³⁴ Additional Protocol No. 1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, Signed at Montreal, on 25 September 1975; Additional Protocol No. 2 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 Montreal, on 25 September 1975; Additional Protocol No. 3 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 and at Guatemala City on 8 March 1971, Signed at Montreal on 25 September 1975.

³⁵ See www.imf.org.

³⁶ Art. I MAP 1 1975.

³⁷ Art. IV MAP 1 1975.

³⁸ Art. I MAP 2 1975.

³⁹ Art. IV MAP 2 1975.

⁴⁰ Art. I MAP 3 1975.

⁴¹ Arts. VI (2) and VIII (2) MAP 1 1975 and MAP 2 1975.

⁴² 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, Signed at Montreal on 25 September 1975.

⁴³ Art. XV, Art. XVII (2) and Art. XIX (2) MAP 4 1975.

30. MAP 4 1975 includes the following significant changes:
- it simplifies and modernises the particulars to be included in the document of carriage and removes the penalty for non-compliance with the documentary requirements
 - it introduces the concept of an electronic air waybill;
 - it introduces four specific defences for the carriage of cargo.
 - the monetary cap limiting the carrier's liability for cargo remains the same, but the monetary unit of 250 gold francs per kilogram is replaced by 17 SDR per kilogram;⁴⁴
 - the monetary cap limiting the carrier's liability becomes unbreakable for the carriage of cargo.

31. MAP 4 1975 entered into force on 14 June 1998 and has been adopted by 53 States.

32. As is apparent from this brief overview over the original Warsaw Convention, adopted in 1929, its amended versions and the Guadalajara Convention 1961 (hereinafter collectively referred to as "Warsaw-system conventions"), the international legal framework evolved from a comprehensive framework of a unified liability regime to what has been described as a "legal labyrinth ... in which even a highly proficient lawyer could easily become lost."⁴⁵ The net result of this evolution is that there are a considerable number of international legal instruments in force, all based on the Warsaw Convention 1929, which may be potentially applicable to a claim arising out of a contract of international carriage of goods by air (see Table 1).

Table 1: The Warsaw-system Conventions	
1. Warsaw Convention 1929	6. Warsaw Convention 1929 supplemented by Guadalajara Convention 1961
2. Warsaw-Hague Convention 1955	7. Warsaw-Hague Convention 1955 supplemented by Guadalajara Convention 1961
3. Warsaw-MAP 1 Convention 1975	8. Warsaw- MAP 1 Convention 1975 supplemented by Guadalajara Convention 1961
4. Warsaw-Hague-MAP 2 Convention 1975	9. Warsaw-Hague-MAP 2 Convention 1975 supplemented by Guadalajara Convention 1961
5. Warsaw-Hague-MAP 4 Convention 1975	10. Warsaw-Hague-MAP 4 Convention 1975 supplemented by Guadalajara Convention 1961

II. Montreal Convention 1999

33. Against this background and in order to unify the fragmented liability regime of the Warsaw-system conventions, the "*Convention for the Unification of Certain Rules Relating to*

⁴⁴ Note that the unit of account relevant to liability arising from carriage of passengers and luggage remains unaffected, i.e. is still expressed in gold francs.

⁴⁵ Paul Stephen Dempsey, *International Air Cargo & Baggage Liability and the Tower of Babel*, 2004, 36 Geo. Wash. Int'l L. Rev. 239. p. 19.

International Carriage by Air" (hereinafter referred to as "Montreal Convention 1999") was adopted in Montreal on 28 May 1999.

34. The **Montreal Convention 1999** provides⁴⁶ that it "*shall prevail over any rules which apply to international carriage by air*" as between Contracting States to the Montreal Convention 1999, which are also Contracting States to one or more of the Warsaw-system conventions. Thus, as between States which are Contracting States to any one of the Warsaw-system conventions and the Montreal Convention 1999, the Montreal Convention 1999 takes precedence.

35. The cardinal achievement of the Montreal Convention 1999 is that it consolidates all the various Warsaw-system conventions in one single text. It therefore provides certainty as to the applicable international air convention and the contracting parties' corresponding rights and obligations. As a result, it creates greater international uniformity of legislation and reduces the need for costly litigation as to the applicable legal regime.

36. The Montreal Convention 1999 reflects changes to the Warsaw-Hague Convention 1955 which had been effected by MAP 4 1975, in relation to the carriage of cargo. It also clarifies the obligations of carriers engaged in code-share or similar operations, by incorporating the provisions of the Guadalajara Convention 1961 on the liability of "*actual*" carriers.

37. In addition, the Montreal Convention 1999 introduces some substantive changes in relation to the carriage of passengers and their luggage. As passenger carriage is not the focus of this report, only brief mention is made of these changes here, for the sake of completeness.⁴⁷

38. The most notable features of the Montreal Convention 1999 in relation to passengers and their baggage are the following:

- for damage in excess of 100,000 SDR arising from injury or death of passengers the monetary cap limiting the carrier's liability is removed; however, the carrier may still be wholly or partly exonerated from liability if he proves that he was not negligent or that there was contributory negligence by the passenger;
- there is strict liability (i.e. liability independent of fault) for proven damages up to 100,000 SDR for injury or death of passengers and the carrier may not exclude or limit his liability;
- the liability of the carrier for delay to passengers is limited to 4,150 SDR;
- the liability of the carrier for loss, damage or delay to baggage is limited to 1,000 SDR for each passenger;
- an action for damages in respect of injury or death of passengers may also be brought before the courts of a Contracting State in which, at the time of the accident, the passenger had his principal and permanent residence.

39. The Montreal Convention 1999 entered into force on 4 November 2003 and has, to date, been adopted by 70 States. The fact that such a large number of States have adopted the Montreal Convention 1999 in a relatively short period of time illustrates the need for greater

⁴⁶ Art. 55 Montreal Convention 1999.

⁴⁷ See also "Simplified Comparative Table of Limitation of Liability and Exceptions to Liability" in Annex 1.

uniformity in the field of air law; it also suggests that the Convention has achieved the right balance between the conflicting interests of the different parties involved in air transportation.

III. How to determine the applicable international air convention

40. As is evident from the above overview, there are different legal regimes which may potentially be applicable to a claim arising from the international carriage of goods by air. Whether one of the Warsaw-system conventions or, alternatively, the Montreal Convention 1999 is an important and, in practice, often complicated question.

41. In all cases, the trigger for the application of any one of the international air conventions and its corresponding legal regime is the concept of "*international carriage*". There is a single definition of "*international carriage*", which has not been changed in substance by the various amendments to the original Warsaw Convention 1929, or by the most recent Montreal Convention 1999. To determine whether a specific contract of carriage is "*international carriage*" governed by one of the international air conventions, there is a two-stage inquiry, which is complex and in practice often creates considerable difficulty, both for traders and for courts charged with the resolution of disputes.

42. In simple terms, the process may be summarized as follows. First, it is necessary to determine whether the carriage comes within the technical concept of "*international carriage*", defined by reference to the **agreed places of departure and destination** and any **agreed stopping place**. Secondly, it is necessary to check that the State/s of departure and destination are Contracting States to the *same* version of either one of the Warsaw-system conventions, or the Montreal Convention 1999.⁴⁸

43. The first stage of the inquiry consists of considering the definition of "*international carriage*". Both the Warsaw-system conventions and the Montreal Convention 1999 use similar language to define the term "*international carriage*". They make reference to the "*contract made by the parties*",⁴⁹ or the "*agreement between the parties*",⁵⁰ in two distinct situations.

- i) The agreed place of departure and the place of destination are situated within the territories of *two Contracting States*, whether or not there is a break in the carriage or a transshipment;
- ii) The agreed place of departure and the place of destination are situated within the territory of a *single Contracting State*, if there is an *agreed stopping place within the territory of another State*, whether or not this is a Contracting State.

44. Therefore, in order to determine whether a contract for the transport of goods is "*international carriage*" governed by any one of the Warsaw-system conventions or the Montreal Convention 1999, it is imperative to study the air waybill or ticket closely to ascertain the agreed places of departure and destination, as well as any agreed stopping place, and to determine whether these meet the requirements set out in i) or ii) above. If the

⁴⁸ See Annex 2.

⁴⁹ Art. 1 (2) Warsaw Convention 1929.

⁵⁰ Art. 1 (2) Warsaw-Hague Convention 1955, Warsaw-Hague-MAP 4 Convention 1975, Montreal Convention 1999.

requirements are met, the contract is one of "international carriage" governed by one of the Warsaw-system conventions or the Montreal Convention 1999, as applicable.

45. Otherwise, the contract is not one of "international carriage" and, therefore, not subject to any of the international air conventions. In these cases, national law and/or the terms of the contract (i.e. terms and conditions printed on the air waybill or passenger ticket or incorporated by reference) will be applicable.

46. Table 2 provides an overview over the potentially applicable international legal instruments and respective Contracting States. As can be seen, in many cases, States will be Contracting Parties to more than one of the international legal regimes.

Table 2: International Conventions on Carriage by Air and Contracting States (as at 1 June 2006)		
<p>Warsaw-system conventions, includes:</p> <ul style="list-style-type: none"> • Warsaw Convention 1929 (adopted by 151 States) • Warsaw-Hague Convention 1955 (adopted by 136 States) • Warsaw-MAP 1 Convention 1975 (adopted by 48 States) • Warsaw-Hague-MAP 2 Convention 1975 (adopted by 49 States) • Warsaw-Hague-MAP 4 Convention 1975 (adopted by 53 States) <hr/> <p>And, supplementary to each of the above conventions:</p> <ul style="list-style-type: none"> • Guadalajara Convention 1961 (adopted by 84 States) 	OR	<ul style="list-style-type: none"> • Montreal Convention 1999 (adopted by 70 States)

47. In cases where more than one international air convention may be applicable, a second stage is necessary, which consists in identifying the specific legal regime applicable to a contract of "international carriage". Thus, it is necessary to determine the "latest" treaty relationship common to both States. This has also been described as the determination of the "lowest common denominator."⁵¹

48. For illustrative purposes, some examples of the legal regime applicable in various types of contract of carriage by air are set out below.

⁵¹ Paul Stephen Dempsey, *International Air Cargo & Baggage Liability and the Tower of Babel*, 2004, 36 Geo. Wash. Int'l L. Rev. 239, p. 8.

- Cairo (Egypt) to Luxor (Egypt):
Domestic carriage, not covered mandatorily by any of the international air law conventions.
- Cairo (Egypt) to Luxor (Egypt), via Khartoum (Sudan):
Egypt is a Contracting State to the Montreal Convention 1999. Therefore, the Montreal Convention 1999 is applicable.
- Geneva (Switzerland) to Bangkok (Thailand):
Thailand is not a Contracting State to any of the Warsaw-system conventions or the Montreal Convention 1999. Switzerland is a Contracting State to the Montreal Convention 1999. Therefore, as the two States are not Contracting States to a common international air convention, national law and/or the terms of the contract of carriage are applicable.
- Kilimanjaro (United Republic of Tanzania) to Jakarta (Indonesia):
The United Republic of Tanzania is a Contracting State to the Montreal Convention 1999, but Indonesia is not. Both Tanzania and Indonesia are Contracting States to the unamended Warsaw Convention 1929. Therefore, the unamended Warsaw Convention 1929 is applicable.
- Mexico City (Mexico) to Sydney (Australia):
Mexico is a Contracting State to the Montreal Convention 1999, whereas Australia is not. Australia is a Contracting State to the Warsaw-Hague-Guadalajara-MAP 4 Convention 1975, whereas Mexico is not. Both Mexico and Australia are Contracting States to the Warsaw-Hague-Guadalajara Convention 1961. Therefore, the Warsaw-Hague-Guadalajara Convention 1961 is applicable.
- Beijing (People's Republic of China) to Tirana (Albania):
China is a Contracting State to the Warsaw Convention 1929 and the Warsaw-Hague Convention 1955. Albania is not a Contracting State to any of the Warsaw-system conventions. However, both P.R. China and Albania are Contracting States to the Montreal Convention 1999. Therefore, the Montreal Convention 1999 is applicable.

49. Once it is determined that there is a contract of "*international carriage*" covered by one of the Warsaw-system conventions, or the Montreal Convention 1999 the application of the identified legal regime is both exclusive and mandatory.

50. Exclusive application means that the conditions and limits of liability set out in the applicable convention provide the only cause of action in disputes arising out of the "*international carriage*" of cargo by air.⁵² All the international air conventions provide⁵³ that "... *any action for damages, however founded, can only be brought subject to the conditions and limits*" of liability set out in the applicable convention. Therefore, a claimant who

⁵² See fn. 18, above. See also further the discussion in Clarke & Yates, *Land and Air* (Clarke & Yates, *Contracts of Carriage by Land and Air*, LLP, 2004) para. 3.145 and 3.146.

⁵³ Art. 24 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955. Art. 24 (2) Warsaw-Hague-MAP 4 Convention 1975 and Art. 29 Montreal Convention 1999 add the words "*whether under this Convention or in contract or in tort or otherwise*".

commences an action for damages⁵⁴ arising out of "*international carriage*" of goods by air cannot circumvent the application of the rules laid down in the international air conventions, by pleading another cause of action.

51. Mandatory application means that the parties to the contract of carriage cannot agree to relieve the carrier of liability, or agree to lower limits of liability than those laid down by the international air conventions.⁵⁵ Thus, whilst it is specified that the parties have freedom to contract and to agree the terms and conditions of their contract,⁵⁶ the carrier may not rely on any contractual terms which conflict with the mandatory rules laid down in the Warsaw-system conventions, or the Montreal Convention 1999. Any such term would be null and void.⁵⁷

IV. Implications for national implementation of international air conventions

52. *Each Contracting State⁵⁸ to any one of the international air conventions needs to fully implement the respective international air conventions at the national level.* In countries where an international agreement needs to be enacted into domestic legislation, this can be achieved in a number of ways, including through integrating the text of an international convention into existing legislation. However, in the interests of certainty and to avoid any conflict of laws issues between different Contracting States, it is important to aim at enacting legislation, which reproduces the totality of the provisions of any one of the international air conventions verbatim and without any changes.

53. In addition, it is important to note that *national implementation of any of the international conventions will not achieve the intended result unless the respective convention has been ratified or acceded to.* In this context, it should be recalled that the trigger for the application of the conventions is, in all cases, "*international carriage*" as defined, i.e. carriage involving *Contracting States*. Thus, a national enactment of an international convention without its ratification would not ensure application of the substantive convention provisions in a case where carriage involves that State. Even if the text of the national statute were to make it clear that carriage to or from that State should be covered by the convention in question, courts in other jurisdictions, which may be charged with deciding on a claim, would, most likely, not give effect to the relevant convention provisions, as the carriage would not involve a *Contracting State*.⁵⁹ Thus, *adoption of an*

⁵⁴ It is not entirely clear whether other remedies such as injunctions, may be available. One commentator argues that this would be possible, as the authoritative French text of the Warsaw Convention 1929 makes reference to the wider term "*action en responsabilité*". See Clarke & Yates, *Land and Air* para. 3.146 and fn. 4.

⁵⁵ Art. 23 Warsaw-system conventions and Art. 26 Montreal Convention 1999.

⁵⁶ Art. 33 Warsaw-system conventions and Art. 27 Montreal Convention 1999. Art. 27 Montreal Convention 1999 further specifies that the carrier may also waive any defences which are available to him under the Montreal Convention 1999.

⁵⁷ Art. 23 Warsaw-system conventions and Art. 26 Montreal Convention 1999. However, note that Art. 23 (2) Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975 entitles the carrier to contractually exclude liability arising from loss or damage resulting from the inherent defect, quality or vice of the cargo carried. This corresponds to one of the specific *statutory* defences in respect of carriage of cargo that were added by Art. 18 (3) (a) Warsaw-Hague-MAP 4 Convention 1975 and Art. 18 (2) (a) Montreal Convention 1999. See below, part B.III.3.d.

⁵⁸ For ease of reference, a consolidated list of the Contracting States to the various international air conventions is provided in Annex 2.

⁵⁹ In any given case, the question of which substantive law to apply is decided according to the rules of the forum, including the rules on conflict of laws (private international law).

international air carriage convention at the international level, through ratification or accession, is vital, to ensure that any relevant national enactment will be fully effective.

54. In view of the complexities of the Warsaw-system conventions, there are clear practical advantages in adopting the Montreal Convention 1999, the latest and most modern and comprehensive of the international conventions in the field. However, unless and until the Montreal Convention 1999 becomes universally adopted, the Warsaw-system conventions and the Montreal Convention 1999 continue to co-exist. As a result, a country's trade with different trading partners may be governed by different international air conventions. ***In cases where more than one of the international conventions has been adopted by a State, particular care is required to ensure effective implementation of each of the international air conventions at the national level.***⁶⁰ The relevant national legislation needs to ensure the application of each international agreement in relation to trade involving Contracting States to that particular convention. This is vital in order to avoid unnecessary confusion among traders and to ensure the application of the relevant international air convention in respect of carriage between different trading partners.

⁶⁰ See Shawcross, *Air Law*, paras. 290-300.

B. KEY ASPECTS OF THE SUBSTANTIVE LIABILITY REGIME APPLICABLE TO THE INTERNATIONAL CARRIAGE OF CARGO

I. Scope of application

55. To determine whether or not one of the Warsaw-system conventions or the Montreal Convention 1999 applies, it is necessary to establish that the carriage in question is "*international carriage*", as defined in the international air conventions, and that it does not come within one of a limited number of exceptions. While the first of these aspects has already been referred to earlier, it is particularly important and, for this reason will be considered further in this part of the document.

1. "International carriage" to which the international air conventions apply

56. The Warsaw-system conventions and the Montreal Convention 1999 apply to "*international carriage*" by air, which is defined by reference to the "*place of departure*", "*place of destination*", and any "*agreed stopping places*."⁶¹ A close look at the air waybill and the "*airport of departure*" and "*airport of destination*" boxes, should reveal what was the agreement between the cargo owner and the carrier. Cargo owners should note that an agreed stopping place is not always stated in the air waybill, but may be stated in the timetables incorporated in the air waybill by reference.⁶² Further, carriers often reserve the right to alter the stopping places in case of necessity, but this will not have the effect of depriving the "*agreed stopping places*" of their character as such.⁶³

57. As has already been mentioned earlier, according to the provisions of the international air conventions, there is "*international carriage*" in the following two cases.

58. First, when both the places of departure and destination are situated within the territories of two Contracting States to one of the international air conventions, whether or not there is a break in the carriage or transshipment (i.e. a fortnight stop, or transfer of cargo from one aircraft to another).⁶⁴

59. Secondly, when both the places of departure and destination are situated within the territory of a single Contracting State to one of the international air conventions and there is an agreed stopping place within the territory of another State, whether or not that other State is a Contracting State.⁶⁵

60. *Thus, all the international air conventions apply only in respect of carriage between two Contracting States to the same international air convention, or in respect of carriage within a single Contracting State, if an intermediary international stopover has been agreed.*

⁶¹ Art. 1 Warsaw-system conventions and Montreal Convention 1999.

⁶² Please note that for the purposes of determining whether there is "*international carriage*" governed by one of the international air conventions, the agreed places of departure and destination as evidenced in the air waybill are of central importance. For the effect of deviation, see Shawcross, *Air Law*, para. 369.

⁶³ *Grein v. Imperial Airways Ltd*, [1937] 1 KB 50, CA. See Shawcross, *Air Law*, para. 348.

⁶⁴ Art. 1 (2) Warsaw-system conventions and Montreal Convention 1999.

⁶⁵ *Ibid.*

61. It is worth pointing out that the international air conventions specify that carriage to be performed by several “*successive*” air carriers (for example, under an inter-line operation whereby two carriers mutually agree to accept air waybills issued by the other and goods are transported from origin to destination by two or more carriers), even if performed under multiple air waybills is treated as undivided carriage if the carrier and the consignor considered it as such.⁶⁶ Therefore, a segment of international carriage performed exclusively within the same State would fall within the scope of the international air conventions. This is important, because, as will be explained later,⁶⁷ the liability regime for “*successive*” carriers is different from the liability regime applicable to “*actual*” carriers (for example, operating under the terms of a non-disclosed code-share agreement).

62. It must be emphasised that the international air conventions only apply to carriage which comes within the definition of “*international carriage*”, as explained above. In respect of carriage which is not governed by an international air convention, liability may depend on the carrier's conditions of carriage. Such conditions of carriage may include a term which applies the monetary cap of the Warsaw Convention 1929 to limit the carrier’s liability for goods lost, damaged, or delayed.⁶⁸

63. In respect of carriage not governed mandatorily by one of the international air law conventions, the advantage of freedom of contract for the carrier is that he can “pick and choose” which provisions of the international air conventions he wishes to comply with and omit those that he does not wish to be bound by.⁶⁹ However, this may also create uncertainty for both the carrier and his clients. In terms of increasing predictability, transparency and consistency, contractual incorporation of the totality of the provisions of one of the international air conventions, such as the Montreal Convention 1999, representing the most complete and recent international regime, may be preferable.

2. Carriage not covered by the international air conventions

64. Some types of carriage are either expressly excluded from the scope of application of the international air conventions, or may be excluded if a Contracting State makes a reservation (subject to the conditions laid down) by declaring that the relevant international air convention will not apply in certain circumstances.

65. First, the international air conventions do not in general apply to the **carriage of mail and postal packages**.⁷⁰

⁶⁶ Art. 1 (3) Warsaw-system conventions and Montreal Convention 1999.

⁶⁷ See below, part B.IV.

⁶⁸ The airline members of IATA have adopted Conditions of Contract (IATA resolution 600b (II), reproduced in Annex 3), which appear on the reverse of the three original copies of the air waybill. Condition 4 provides the relevant limit of liability in cases where no mandatory air convention applies. It should be noted that the text of that provision has been changed in the latest edition dated October 2004. According to information contained in the document, the changed wording is, however, still awaiting approval and not yet effective.

⁶⁹ Subject to any mandatory national law provisions that may also be applicable.

⁷⁰ It should be noted, however, that there are some differences between the various international air conventions. Art. 2 (2) Warsaw Convention 1929 provides that it does not apply to “*carriage performed under the terms of any international postal Convention*”. Art. 2 (2) Warsaw-Hague Convention 1955 provides that it does not apply to carriage of “*mail and postal packages*”. Art. 2 Warsaw-Hague-MAP 4 Convention 1975 and Art. 2 Montreal Convention 1999 provide that they do not apply to the “*carriage of postal items*”, except that 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*”.

66. Secondly, the Warsaw Convention 1929 does not apply to **carriage performed by way of experimental trial by "air navigation undertakings"** (i.e. commercial carriers) with a view to establishing a regular line of air navigation.⁷¹ This is due to the fact that commercial aviation was still developing at the time when the Warsaw Convention 1929 was signed.

67. Thirdly, the Warsaw Convention 1929 does not apply to **carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business**, for example in cases of carriage of cargo to a territory affected by hostilities. In this context it should be noted, however, that all the other international air conventions, namely, the Warsaw-Hague Convention 1955, the Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999 provide differently. Under any of the aforementioned international air conventions, the provisions as to the liability of the air carrier continue to apply, but the provisions relevant to the requirements as to the issuing of an air waybill and as to the particulars to be contained therein, do not apply.⁷²

68. Fourthly, all the international air conventions, with the exception of the Warsaw Convention 1929, provide⁷³ that a Contracting State may make a reservation in relation to **carriage for a State's military authorities** on aircraft, registered in (or leased by)⁷⁴ that State the whole capacity of which has been reserved by or on behalf of such authorities. For example, where a State charters aircraft to transport military goods to a war zone in another State. Only few States have taken advantage of this reservation.⁷⁵

69. Fifthly, all the international air conventions, provide⁷⁶ that whilst they apply to carriage performed by the State or by legally constituted public bodies, a Contracting State may make a reservation⁷⁷ so that the relevant international air convention will not apply in relation to **carriage performed (and operated) directly by the State (for non commercial purposes in respect of its functions and duties as a sovereign State)**. The words here included in brackets have been added by the Montreal Convention 1999 to reinforce the fact that if a State holds shares in an air carriage company, the air carrier is not entitled to avoid the application of the international air conventions by invoking the State reservation. To come within the State reservation exception, the carriage has to be performed directly **by** the State and not by an air carrier, as part of its commercial operations, **for** the State. Only few States have made reservations for carriage performed directly by the State.⁷⁸

⁷¹ Art. 34 Warsaw Convention 1929.

⁷² Art. 34 Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975, and Art. 51 Montreal Convention 1999.

⁷³ Art. XXVI Hague Protocol 1955, Art. XXI (1) (a) MAP 4 Protocol 1975, and Art. 57 (b) Montreal Convention 1999.

⁷⁴ Phrase within brackets added by Art. 57 (b) Montreal Convention 1999.

⁷⁵ Warsaw-Hague Convention 1955: reservation made by three countries; Warsaw-MAP 2 Convention 1975: reservation made by two countries; Warsaw-Hague-MAP 4 Convention 1975: reservation made by two countries; Montreal Convention 1999: reservation made by seven countries.

⁷⁶ Art. 2 (1) Warsaw-system conventions and Montreal Convention 1999.

⁷⁷ "Additional Protocol With Reference to Art. 2" Warsaw Convention 1929 (at the very end of the convention), which has not been modified by the subsequent Warsaw-system conventions. Art. 57 (a) Montreal Convention 1999.

⁷⁸ Warsaw Convention 1929: reservation made by seven countries; Montreal Convention 1999: reservation made by eight countries.

II. Air waybill

70. The air waybill⁷⁹ is by far the most essential document issued in respect of the international carriage of cargo. It evidences the contract or agreement of international carriage between the parties and plays a central role in the liability regime.

71. In current practice⁸⁰ air waybills are usually not negotiable.⁸¹ This is explained by the speed of air transport, which means that there is normally no need for a document which enables sale of goods in transit.⁸²

1. Form and purpose of the air waybill

72. The airline members of IATA⁸³ agreed to introduce a standard form air waybill⁸⁴ for international carriage by air of cargo. This has become adopted as the international norm because its layout and wording enables the incorporation of all the particulars required by the various international air conventions. The airline members of IATA have also agreed on alternative form *Conditions of Contract*,⁸⁵ printed on the reverse of the standard form air waybill. The Conditions of Contract include the provisions required under the international air law conventions, as well as other terms, applicable in cases where none of the conventions applies or dealing with matters not regulated in the conventions. Terms cover issues such as limitation of the air carrier's liability, the liability of servants and agents of the carrier, written notice of complaint within a specified number of days, time limitation and related matters.⁸⁶

73. The Conditions of Contract are supplemented by the airline's *Conditions of Carriage* of cargo, which are often contained in a separate booklet or manual, issued by the carrier to interested parties upon request and incorporated into the air waybill by reference. An airline's Conditions of Carriage deal with issues such as when delivery takes place, the handling of perishable goods or dangerous goods, the carrier's rights of disposal in the event of non-collection or non-payment of fees and the shipper's obligation with regard to delivery of the cargo, its condition and packing.

74. The air waybill is the most important cargo document issued by the carrier or its authorised cargo agent and serves several purposes. Most important of these is its evidentiary

⁷⁹ The term "air consignment note" is only used in the Warsaw Convention 1929. The other international air conventions use the more modern term "air waybill", which will be used throughout this report.

⁸⁰ Shawcross, *Air Law*, para. 587, fn. 4a.

⁸¹ The Warsaw Convention 1929 does not deal with the question of the negotiability of the air waybill. Art. 15 (3) Warsaw-Hague Convention 1955 adds that "[n]othing in this Convention prevents the issue of a negotiable air waybill". This additional paragraph was deleted from the text of the Warsaw-Hague-MAP 4 Convention 1975, and is not reflected in the text of the Montreal Convention 1999. The fact that air waybills are not negotiable is often expressly stated in the top right hand corner of an air waybill.

⁸² This is in contrast to the maritime practice of issuing negotiable bills of lading, where the right to possession of the goods on board the ship may be transferred by endorsement and transfer of the document.

⁸³ International Air Transport Association (IATA).

⁸⁴ As set out in Attachment "A" of IATA Resolution 600a. See Annex 3 for a copy of the standard IATA Air Waybill specifications.

⁸⁵ IATA Resolution 600b (II), as set out in Annex 3 to this document.

⁸⁶ See on this complex Clarke & Yates, *Land and Air*, para. 3.671 *et. seq.* A copy of the most recent IATA Conditions of Contract are attached in Annex 3. Note that in cases where one of the air law conventions applies, contractual terms that conflict with the mandatory provisions of the respective Convention will be considered null and void.

function. The Warsaw-system conventions and the Montreal Convention 1999 (with minor changes indicated in brackets) provide⁸⁷ that the air waybill or cargo receipt is prima facie evidence⁸⁸ of the following:

- the conclusion of the contract of carriage and conditions of carriage.
- the receipt of the goods (or acceptance of the cargo) by the carrier and the statements as to the weight, dimensions, packing of the cargo and number of packages.
- the stated quantity, volume and condition of the cargo (as against the carrier); however, only if a) the carrier, in the presence of the consignor, has checked these and b) a statement to this effect is included on the face of the air waybill, or if the stated fact relates to the *apparent* condition of the cargo. This means that in the absence of any indication on the face of the air waybill, there is no presumption that the carrier received the cargo in good condition.⁸⁹

2. Delivery and description of the air waybill

75. All the international air conventions contain similar provisions on the requirement as to delivery and description of air waybills, except that the two most recent of these, the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999, also authorise the use of an electronic record in place of a traditional paper air waybill.

76. First, the international air conventions provide that "*an air waybill shall be delivered*"⁹⁰ in respect of the carriage of cargo. This was more extensively described in the Warsaw Convention 1929 and Warsaw-Hague Convention 1955, however, the meaning is essentially the same.⁹¹

77. Secondly, the international air conventions provide that if there is more than one package, the carrier has the right to require the consignor to make out separate air waybills, or cargo receipts.⁹²

78. Thirdly, the international air conventions provide⁹³ that the consignor shall make out the air waybill in three original parts and hand it over to the carrier with the goods, in the following order.

- The first part shall be marked "for the carrier" and shall be signed⁹⁴ by the consignor. This part is for the carrier's file and the signature of the consignor is an acknowledgement that the contents of the air waybill are correct.

⁸⁷ Art. 11 Warsaw-system conventions and Montreal Convention 1999.

⁸⁸ A presumption is established which, however, may be rebutted by other evidence.

⁸⁹ In practice, a notice on the face of the air waybill states that: "*[i]t is agreed that the goods described are accepted in apparent good order and condition (except as noted)*".

⁹⁰ Art. 5 (1) Warsaw-Hague-MAP 4 Convention 1975 and Art. 4 (1) Montreal Convention 1999, which also specify that electronic air waybills may substitute paper air waybills.

⁹¹ Art. 5 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955 provide that "*[e]very carrier of goods has the right to require the consignor to make out and hand over to him a document called an [air waybill]; every consignor has the right to require the carrier to accept this document.*"

⁹² Art. 7 Warsaw-system conventions and Art. 8 Montreal Convention 1999.

⁹³ Art. 6 Warsaw-system conventions and Art. 7 Montreal Convention 1999.

⁹⁴ Art. 6 (4) Warsaw Convention 1929 and Warsaw-Hague Convention 1955 provide that the signature of the carrier may be stamped, and that of the consignor may be printed or stamped. Art. 6 (3) Warsaw-Hague-MAP 4

- The second part shall be marked "for the consignee" and shall be signed⁹⁵ by the consignor and by the carrier.⁹⁶ This part is for the consignee, who may use it to complain to the carrier if the goods are not delivered in good condition, or not delivered at all.
- The third part shall be signed⁹⁷ by the carrier and shall be handed to the consignor after the goods have been accepted by the carrier for carriage.⁹⁸ This part is to facilitate disposal of the goods in accordance with the consignor's right of disposal during the carriage and prior to delivery to the consignee.⁹⁹

79. Whilst the international air conventions specify that the consignor makes out the air waybill,¹⁰⁰ in practice it is often made out and completed by the carrier, as agent of the consignor¹⁰¹ and on the consignor's instructions. However, it is the responsibility of the consignor to ensure the correctness of the particulars and statements contained in the air waybill,¹⁰² and the consignor is ultimately liable for the accuracy of any particulars provided to the carrier.¹⁰³

80. One of the innovations of the Warsaw-Hague-MAP 4 Convention 1975, which is also reflected in almost identical terms in the Montreal Convention 1999, is that the parties may use simplified electronic records to facilitate shipments instead of paper air waybills. Upon request, the carrier must deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information stored electronically.¹⁰⁴

81. The Warsaw-Hague-MAP 4 Convention 1975 includes two additional provisions on the use of electronic records, which have been omitted from the subsequent Montreal Convention 1999. First, the consignor needs to give his consent to the carrier to substitute the paper air waybill with an electronic record.¹⁰⁵ Secondly, the carrier may not refuse to accept

Convention 1975 and Art. 7 (3) Montreal Convention 1999 provide that the signature of the carrier and that of the consignor may be printed or stamped.

⁹⁵ *Ibid.*

⁹⁶ Art. 6 (2) Warsaw Convention 1929 and Warsaw-Hague Convention 1955 include an additional provision that the second part of the air waybill "*shall accompany the goods*". This has been omitted from the text of the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999.

⁹⁷ Art. 6 (4) Warsaw Convention 1929 and Warsaw-Hague Convention 1955 provide that the signature of the carrier may be stamped, and that of the consignor may be printed or stamped. Art. 6 (3) Warsaw-Hague-MAP 4 Convention 1975 and Art. 7 (3) Montreal Convention 1999 provide that the signature of the carrier and that of the consignor may be printed or stamped.

⁹⁸ Art. 6 (3) Warsaw Convention 1929 specifies "*on acceptance of the goods*", and the same provision in the Warsaw-Hague Convention 1955 amends this phrase to "*prior to the loading*" of the goods on board the aircraft. Reference as to when the carrier signs has been omitted from the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999 because the purpose of the carrier's signature is to acknowledge receipt of the cargo, which is fulfilled when the carrier hands the third part of the air waybill to the consignor.

⁹⁹ See below, part B.II.4.

¹⁰⁰ Art. 6 (1) Warsaw-system conventions and Art. 7 (1) Montreal Convention 1999.

¹⁰¹ Art. 6 (5) Warsaw Convention 1929 and Warsaw-Hague Convention 1955, Art. 6 (4) Warsaw-Hague-MAP 4 Convention 1975, and Art. 7 (4) Montreal Convention 1999.

¹⁰² Art. 10 (1) Warsaw-system conventions and Montreal Convention 1999.

¹⁰³ Art. 10 (2) Warsaw-system conventions and Montreal Convention 1999. The liability of the consignor to the carrier in respect of the contents of the air waybill and attached information is considered below, in part B.V.

¹⁰⁴ Art. 5 (2) Warsaw-Hague-MAP 4 Convention 1975, and Art. 4 (2) Montreal Convention 1999.

¹⁰⁵ Art. 5 (2) Warsaw-Hague-MAP 4 Convention 1975.

the cargo for carriage because the points of transit and destination are not equipped for the use of electronic air waybills.¹⁰⁶

82. It is interesting to note that the above two provisions have not been included in the Montreal Convention 1999. This may be due to the fact that electronic storage and retrieval of information are increasingly becoming standard practice in transport transactions.

3. Particulars to be included

83. Under the Warsaw Convention 1929 the air waybill must contain the following list of seventeen particulars:¹⁰⁷

- (a) *"the place and date of its execution;*
- (b) *the place of departure and of destination;*
- (c) *the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;*
- (d) *the name and address of the consignor;*
- (e) *the name and address of the first carrier;*
- (f) *the name and address of the consignee, if the case so requires;*
- (g) *the nature of the goods;*
- (h) *the number of the packages, the method of packing and the particular marks or numbers upon them;*
- (i) *the weight, the quantity and the volume or dimensions of the goods;*
- (j) *the apparent condition of the goods and of the packing;*
- (k) *the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;*
- (l) *if the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;*
- (m) *the amount of the value declared in accordance with Article 22 (2);*¹⁰⁸
- (n) *the number of parts of the [air waybill];*
- (o) *the documents handed to the carrier to accompany the [air waybill];*
- (p) *the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;*
- (q) *a statement that the carriage is subject to the rules relating to liability established by [the Warsaw Convention 1929]."*

84. The Warsaw Convention 1929 provides that failure to include the particulars listed in (a) to (i) and (q) above in the air waybill, or acceptance of goods by the carrier without an air waybill, leads to loss of the carrier's right to limitation of liability.¹⁰⁹

¹⁰⁶ Art. 5 (3) Warsaw-Hague-MAP 4 Convention 1975.

¹⁰⁷ Art. 8 Warsaw Convention 1929.

¹⁰⁸ Article 22 (2) Warsaw Convention 1929 provides that when the consignor hands over the package to the carrier, the consignor may make a special declaration of the value of the package at delivery and pay a supplementary sum, if required. For the effect of such declaration of value on the carrier's limitation of liability, see below, part B.III.4.b.

¹⁰⁹ Art. 9 Warsaw Convention 1929.

85. The Warsaw-Hague Convention 1955 reduces to only three the list of particulars that the air waybill must contain,¹¹⁰ namely:

- (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 [Contracting State], 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."*

86. Particulars (a) to (c) above, are designed to draw the parties' attention to facts that indicate that the contract is one of "*international carriage*", as defined, and thus subject to the Warsaw-Hague Convention 1955, and to put on notice any "*successive*" carriers.¹¹¹ In addition, the notice required under (c) draws attention to the fact that in cases where the Warsaw-Hague Convention 1955 applies, there is a monetary cap limiting the carrier's liability. This notice is fundamental to the carrier's right to limited liability: if the air waybill does not include the notice, or if cargo is loaded on board the aircraft without an air waybill, the carrier is deprived of the monetary cap limiting his liability.¹¹²

87. The Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999 simplify even further the list of particulars that the air waybill, or cargo receipt must contain,¹¹³ namely:

- (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 [Contracting State], 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."*

88. As can be seen, the required particulars under (a) and (b) are the same as under the Warsaw-Hague Convention 1955. The statement required under (c) serves as a basis for the calculation of the monetary cap limiting the air carrier's liability. More importantly, however, the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999 provide¹¹⁴ that absence of any or all of the particulars, or failure to deliver an air waybill, does *not* deprive the air carrier of the monetary cap limiting his liability. This represents an important change to the position under the earlier legal instruments.

89. As is evident from the above, the Montreal Convention 1999 preserves and modernises the benefits achieved under the Warsaw-Hague-MAP 4 Convention 1975. Thus, the formerly cumbersome particulars to be included in air waybills have been simplified, the

¹¹⁰ Art. 8 Warsaw-Hague Convention 1955.

¹¹¹ See below, part B.IV.2.

¹¹² Art. 9 Warsaw-Hague Convention 1955. For an interesting case on the important issue of what the notice requirement under Art. 8(c) entails, see *Fujitsu Computer Products Corporation v. Bax Global Inc.* [2005] EWHC 2289 (Comm); [2006] All E.R. (Comm) 211 (at para. 19 of the judgment).

¹¹³ Art. 8 Warsaw-Hague-MAP 4 Convention 1975, and Art. 5 Montreal Convention 1999.

¹¹⁴ Art. 9 Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999.

use of electronic air waybills to facilitate shipments is expressly envisaged, and any “penalty” for a carrier's failure to comply with the air waybill requirements has been removed.

4. Consignor's right of disposal and consignee's right to delivery

90. The international air conventions confer on the consignor a right of disposal of the goods during the carriage by air and before the goods are delivered to the consignee. The consignor may withdraw the goods at the airport of departure or destination, he may stop the goods in the course of carriage at any landing, or he may name a person (other than the consignee named in the air waybill) as the person to whom the goods should be delivered. Naturally, the consignor may not prejudice the carrier or other consignors in the exercise of this right, and he must repay any expenses occasioned as a result.¹¹⁵

91. The right of disposal of the consignor ends when the right of the consignee to delivery of the cargo at destination begins, except if the consignee declines to accept the goods, or if he cannot be communicated with.¹¹⁶

92. To exercise his right of disposal, the consignor must produce the third part of the air waybill which is signed by the carrier and is handed over to the consignor after the carrier has accepted the cargo for carriage. The carrier must inform the consignor forthwith if it is impossible to carry out the consignor's orders. However, if the carrier complies with the consignor's directions, the carrier must request that the consignor produce the third part of the air waybill. If the carrier does not require the production of the third part of the air waybill, he is liable to any person who is lawfully in possession of that part of the air waybill and has suffered damage as a result. The carrier may, of course, make a claim against the consignor to recover any resulting loss.¹¹⁷

93. Unless the consignor has exercised his right of disposal of the goods, the consignee has the right to the delivery of the goods¹¹⁸ on arrival at the place of destination.¹¹⁹ The carrier needs to give notice to the consignee as soon as the goods arrive. At delivery, the consignee must pay any charges due and comply with the conditions of carriage set out in the air waybill.

94. If the carrier admits that the goods are lost, or if the goods have not arrived after seven days from the date on which they ought to have arrived, the consignee is entitled to enforce his rights under the contract of carriage, namely, seek damages against the carrier.¹²⁰

95. Further, all the international air conventions confer a right of action on the consignor and the consignee, who may each enforce their respective right of disposal and right to delivery of the goods, whether acting in their own interest, or in the interest of another.¹²¹

¹¹⁵ Art. 12 Warsaw-system conventions and Montreal Convention 1999.

¹¹⁶ *Ibid.* See further, Shawcross, *Air Law*, paras. 607-621.

¹¹⁷ Art. 12 Warsaw-system conventions and Montreal Convention 1999.

¹¹⁸ Art. 12 (4) and Art. 13 (1) Warsaw-system conventions and Montreal Convention 1999.

¹¹⁹ Art. 13 Warsaw-system conventions and Montreal Convention 1999.

¹²⁰ *Ibid.*

¹²¹ Provided they carry out the "*obligations imposed by the contract*"; Art. 14 Warsaw-system conventions and Montreal Convention 1999. It should be noted, however, that the scope of this right is not uncontroversial. See further Clarke & Yates, *Land and Air* at para. 3.92. Under English common law, the owner of the goods may be entitled to sue the carrier independently of any rights derived from either the consignor or the consignee; see *Western Digital Corporation and ors. v. British Airways Plc.* [2001] Q.B. 733 (C.A.).

96. Finally, subject to any rights and obligations that the consignor and the consignee may have towards each other or towards any third parties, they may vary the aforementioned provisions of the international air conventions, by express reference recorded in the air waybill.¹²² In practice, such derogation from the provisions of the international air conventions is, however, exceptional.

III. Air carrier's liability for loss, damage or delay

97. The *raison d'être* of all the international air conventions and thus of central importance are the provisions on the air carrier's liability, which apply mandatorily and may not be contractually modified to the benefit of the carrier. The common features of the liability regime under the international air conventions can be summarised as follows.¹²³

98. First, in case of damage or delay to cargo, the person entitled to delivery or the claimant¹²⁴ **must complain in writing to the carrier after the discovery of the damage, and within a specified number of days from the date of receipt in case of damage,¹²⁵ or from the date on which the cargo should have been delivered in case of delay.¹²⁶** This is to provide the carrier with the opportunity to investigate the facts and circumstances of the damage or delay, collect and retain the necessary documents and information, and assess his potential liability. Failure to complain within the specified number of days is prima facie evidence that the goods have been delivered in good condition and in accordance with the documents of carriage. More importantly, failure to complain will prevent the claimant from subsequently bringing an action against the carrier, except in cases where there is fraud on the part of the carrier.¹²⁷

99. Secondly, **a claimant has two years to bring a court action, or arbitral proceedings¹²⁸** claiming damages against the carrier, from the date of arrival of the goods at their destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.¹²⁹ If more than one point is applicable, the latest in date is relevant.¹³⁰ After the period of two years the claimant's right to bring an action against the

¹²² Art. 15 Warsaw-system conventions and Montreal Convention 1999.

¹²³ On mandatory application, see para. 51, above. In respect of limitation of liability and exceptions to liability under the various international legal instruments, see also the simplified comparative table in Annex 1.

¹²⁴ For a discussion as to who is the appropriate claimant, see Shawcross, *Air Law*, para. 622.

¹²⁵ Art. 26 (2) Warsaw Convention 1929 stipulates seven days from the date of receipt in case of damage. Art. 26 (2) Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975, as well as Art. 31 (2) Montreal Convention 1999 stipulate fourteen days from the date of receipt in case of damage.

¹²⁶ Art. 26 (2) Warsaw Convention 1929 stipulates fourteen days from the date on which the cargo should have been delivered in case of delay. Art. 26 (2) Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975, and Art. 31 (2) Montreal Convention 1999 stipulate twenty-one days from the date on which the cargo should have been delivered in case of delay.

¹²⁷ Art. 26 Warsaw-system conventions, and Art. 31 Montreal Convention 1999. For an illustrative case, where it was held that a claim against a carrier was barred for failure to notify a complaint within the prescribed time limit, see *Western Digital Corporation and ors. v. British Airways Plc.* [2001] Q.B. 733 (C.A.)

¹²⁸ Art. 32 Warsaw-system Conventions, and Art. 34 Montreal Convention 1999. Contractual arbitration agreements are permitted in relation to the carriage of cargo.

¹²⁹ Art. 29 Warsaw-system conventions, and Art. 35 Montreal Convention 1999, which also provide that the method of calculating the period of limitation, i.e. whether a year means twelve calendar months or 365 days, or whether parts of a day are disregarded, is determined by the law of the court seized of the case.

¹³⁰ *All Transport v. Seaboard World Air Lines*, 349 NYS 2d 277 (1988).

carrier is extinguished.¹³¹ This means the claimant's right is lost. As succinctly put by a New South Wales court, it is "*non-existent ... finished, gone forever.*"¹³²

100. Thirdly, the **claimant needs to prove the extent of his loss** as damages are only payable in respect of the actual loss suffered.

101. If the three conditions listed above have been complied with (i.e. written complaint within the specified notice period, action within the two-year time limit, and proof of loss), then **the carrier is prima facie liable** for the loss of or damage to cargo and for delay during the time the cargo is in the charge of the carrier.

102. However, **the carrier is entitled to rely on specified defences, which he needs to prove** to exonerate himself, wholly or partly, from liability.

103. The liability of the air carrier for delay, loss, or damage to cargo is limited to a maximum amount per kilogram, (also called **monetary cap**).

104. In certain circumstances of serious misconduct, under some of the international air conventions, **the carrier loses the benefit of the monetary cap limiting his liability** for delay, loss, or damage to cargo.

1. Presumed liability of the carrier for loss or damage during carriage by air

105. A fundamental tenet of all the international air conventions is the presumed liability of the air carrier for all loss or damage during air carriage. Thus, the claimant whose goods are lost or damaged does not need to prove that the carrier was at fault. In this respect, the relevant provisions of the international air conventions are substantially the same, with minor semantic differences for the Montreal Convention 1999, which are here indicated within brackets, as appropriate.

106. All the international air conventions provide that the air carrier is liable if "*the occurrence (event) which caused the damage ... took place during the carriage by air*",¹³³ even if the substantive consequential damage occurred later.¹³⁴

107. The period of "*carriage by air*" is defined,¹³⁵ in all the international air conventions, as the period during which the goods are "*in the charge of the carrier*". The additional phrase

¹³¹ Art. 29 Warsaw-system conventions, and Art. 35 Montreal Convention 1999.

¹³² *Proctor v. Jetway* [1982] 2 NSWLR 264, 271.

¹³³ Art. 18 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955, Art. 18 (2) Warsaw-Hague-MAP 4 Convention 1975, Art. 18 (1) Montreal Convention 1999.

¹³⁴ See Shawcross, *Air Law*, para. 589 citing the discussion in *Nowell v. Qantas Airways Ltd* 22 Avi 18, 071 (WD Wash, 1990). Further, Shawcross in the same paragraph states that Art. 18 (1) Warsaw-Hague Convention 1955 [and the other international air conventions] contemplate the award of consequential damages, such as loss of expected profit or the cost of hiring replacement items, but the precise scope of recovery is not specified in the international air conventions and will therefore be determined by the appropriate conflict rules of the court before which an action is brought.

¹³⁵ Cf. Art. 18 (2) Warsaw Convention 1929 and Warsaw-Hague Convention 1955, Art. 18 (4) Warsaw-Hague-MAP 4 Convention 1975, Art. 18 (3) Montreal Convention 1999.

"whether in an airport¹³⁶ or on board an aircraft, or, in the case of landing outside an airport, in any place whatsoever", which is included in the relevant provisions of the Warsaw-system conventions, was omitted from the text of the Montreal Convention 1999.¹³⁷

108. Therefore, the central question for determining the liability of the carrier during the "carriage by air" is whether or not the goods are in the "charge of the carrier". The carrier must be in a position to control the situation and protect the goods. In the United Kingdom it has been held that the goods must be effectively in the "safe-keeping, custody, [and] care"¹³⁸ of the carrier. The air waybill, or cargo receipt may be decisive in determining when the cargo first came into the carrier's charge. Further, the period of the carrier's responsibility should normally end when the goods have been delivered to the consignee.¹³⁹

109. The term "airport" has been interpreted as including the terminals and other buildings within the airport's premises. Whether or not a freight-handling or storage facility outside the airport perimeter is part of the airport is a matter of interpretation, and may depend on the law of the court where a claim is brought. A United States court held¹⁴⁰ that, notwithstanding the commercial realities, the term airport excluded a warehouse located less than a quarter of a mile beyond the airport limits.

110. All the international air conventions specify¹⁴¹ that the period of "carriage by air" does not include "carriage by land, by sea, or by river performed outside an airport". However, a presumption is established (which may be rebutted by other evidence) that the damage resulted during the "carriage by air" in cases where there is "carriage by land, by sea, or by river (inland waterway) performed outside an airport", in the "performance of a contract for carriage by air", and for the "purpose of loading, delivery or transshipment" of the cargo. Therefore, in the absence of contrary evidence, the claimant is not required to prove exactly where the damaging event occurred, and it is presumed that the damage occurred during air carriage. However, if there is evidence that the damage was occasioned by an event outside an airport, and thus clearly not during the carriage by air, the liability of the carrier will not be governed mandatorily by an international air convention.

111. Whether carriage by land or water performed outside an airport is for the "purpose of loading, delivery or transshipment", and thus triggers the rebuttable presumption that the damage occurred during the "carriage by air" is a question of fact and depends on the

¹³⁶ Art. 18 (2) Warsaw Convention 1929 and Warsaw-Hague Convention 1955 use the term "aerodrome", whereas Art. 18 (4) Warsaw-Hague-MAP 4 Convention 1975 uses the more modern term "airport". The difference is semantic.

¹³⁷ Art. 18 (3) Montreal Convention 1999.

¹³⁸ *Swiss Bank Corp. and Others v. Brink's-MAT Ltd and Others* [1986] 2 Lloyd's Rep. 79.

¹³⁹ Often goods are delivered to third parties, in which case there are issues of agency to consider. Whether the goods are in the carrier's charge when they are subject to customs procedures, depends on the facts and circumstances of each case, see Shawcross, *Air Law*, para. 601, and cited case law. For example, in a French case (cited in fn. 4) it was held that the goods were no longer in the charge of the carrier, when the retention of cargo in a warehouse during a strike of customs officers lasted for five months, *Société National Air France v. Société Arlab* (Aix-en-Provence CA, 29 November 1983), (1985) 39 RFDA 478. In a German case (cited in fn. 5) it was held that confiscation of goods by the authorities brought the period of carriage by air to an end, *Landgericht Hamburg* (64 O 36) (1988).

¹⁴⁰ *Victoria Sales Corp. v. Emery Air Freight Inc.*, 917 F 2d 705(2nd Cir. 1990), 22 Avi 18,502.

¹⁴¹ Art. 18 (3) Warsaw Convention 1929, Warsaw-Hague Convention 1955, Art. 18 (5) Warsaw-Hague-MAP 4 Convention 1975, and Art. 18 (4) Montreal Convention 1999 are substantially the same, except for minor semantic differences indicated within brackets for the Montreal Convention 1999.

circumstances of each case. Information stated on the air waybill may be decisive. For example, when the air waybill specifies delivery to the consignor's own address, surface carriage from the airport to that address will be for the purpose of delivery.¹⁴² However, when onward surface carriage is arranged after receipt of the goods has been acknowledged by the consignee at the airport of destination, it will not be treated as carriage in the "*performance of a contract for carriage by air*" and for the "*purpose of loading, delivery or transshipment*".¹⁴³

112. Therefore, if it is envisaged that the carriage by air will involve some ancillary transport by other modes, the parties to the contract should include a corresponding reference in the air waybill, to ensure application of any of the international air conventions throughout.

113. It should be noted that the international air conventions provide¹⁴⁴ that in case of "*combined carriage performed partly by air and partly by any other mode of carriage*", the provisions of the relevant international air convention "*apply only to the carriage by air*". Furthermore, in the case of combined carriage, the parties may insert "*in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of the [relevant international air convention] are observed as regards the carriage by air.*"¹⁴⁵ The parties may also stipulate in the air waybill that the same conditions and liability limits of the international air conventions also govern surface portions of the through combined air/surface transport.¹⁴⁶ Such provisions would be enforceable, absent other mandatory law applicable to the through combined air/surface transport that is inconsistent with such provisions. If, however, nothing is specified in the air waybill, an air carrier who may routinely operate road vehicles in an integrated intermodal movement, may find that a road liability regime (and not the air liability regime) would apply to the road part of the carriage.¹⁴⁷

114. The Montreal Convention 1999 expressly adds an important qualification to the provision that in cases of combined carriage the provisions of the relevant international air convention "*apply only to the carriage by air.*"¹⁴⁸ Namely, "*if a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.*"¹⁴⁹ Thus, in these cases the Montreal Convention 1999 would apply, even if it were established that the damage occurred in fact during land transport outside an airport.¹⁵⁰

¹⁴² *Jaycees Patou Inc v. Pier Air International Ltd*, 714 F Supp 81 (SDNY, 1989), 21 Avi 18, 496.

¹⁴³ *Compagnie Trans World Airlines v. Guigui* (Cour de Cass. 17 March 1966), (1966) 20 RFDA 333. For further case law, see Shawcross, *Air Law*, para. 602, fn. 13 and 14.

¹⁴⁴ Art. 31 (1) Warsaw-system conventions, and Art. 38 (1) Montreal Convention 1999.

¹⁴⁵ Art. 31 (2) Warsaw-system conventions, and Art. 38 (2) Montreal Convention 1999.

¹⁴⁶ See, *Siemens Ltd v. Schenker International (Australia) Pty Ltd & Another*, [2004] HCA 11, a decision by the highest court in Australia.

¹⁴⁷ See further Shawcross, *Air Law*, para. 368. See also *Quantum Corporation Ltd v. Plane Trucking Ltd* [2002] 1 W.L.R., a decision by the English Court of Appeal, where CMR 1956 was held to apply to a road carriage segment of transport, overriding the airline's own contractual conditions limiting liability.

¹⁴⁸ Art. 38 (1) Montreal Convention 1999 is stated to be subject to Art. 18 (4) Montreal Convention 1999.

¹⁴⁹ Last sentence of Article 18 (4) Montreal Convention 1999.

¹⁵⁰ The question arises, however, as to what amounts to "*consent of the consignor*", in particular whether tacit consent may be assumed in certain circumstances. This would depend on the circumstances of the case.

115. This provision is in line with case law decided under the Warsaw-system conventions. Namely, where cargo is carried by land for reasons connected with the carrier's operational convenience only, such carriage will be considered to be for the purpose of delivery,¹⁵¹ and therefore come within the scope of the international air conventions.

2. Presumed liability of the carrier for delay

116. In contrast to some other international transport conventions, the international air conventions provide expressly for liability in case of delay of the goods.

117. If the goods are delayed for an unreasonable amount of time,¹⁵² or if the delay (even if not unreasonable in its duration) causes the destruction or loss of the cargo, the cargo owner does not need to prove that the carrier was at fault. Subject to giving written notice of complaint within the prescribed time-limits,¹⁵³ the international air conventions provide¹⁵⁴ that the air carrier is liable for damage occasioned by delay in the carriage of goods or cargo.

118. It should be noted that there are no special rules on the monetary limitation of liability in cases of delay and the rules applicable to loss of or damage to cargo apply equally to damage caused by delay.

3. Defences available to the air carrier

119. Whereas there is a presumption that the air carrier is liable for any loss of or damage to cargo and for delay, the air carrier disposes of a number of narrowly defined defences to exonerate himself, wholly or partly, from liability. The burden of adducing the necessary evidence to prove the defences is on the carrier.

120. The defences, which will be examined in more detail below, are the following:

- (a) defence of "all necessary measures";
- (b) defence of "negligent pilotage"; and
- (c) defence that the claimant was "contributory negligent."

121. In relation to the carriage of cargo, four further specific defences may apply, namely:

- (a) inherent defect, quality or vice of the goods;
- (b) defective packing of the goods;
- (c) act of war; and
- (d) act of public authority.

¹⁵¹ See *Cie UTA v. Ste Electro-Enterprise* (Cour de Cass., 31 January 1978) (1979) 33 RFDA 310, and Shawcross, *Air Law*, para. 602, fn. 10.

¹⁵² The word "delay" is generally thought to mean that, in the absence of any express contract, a carrier is only bound to perform the carriage within a reasonable time having regard to all the circumstances of the case. See Shawcross, *Air Law*, para. 626.

¹⁵³ The time-limit for written notice of complaint in case of delay is calculated from the date of receipt. Art. 26 Warsaw Convention 1929 stipulates fourteen days. Art. 26 Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975, and Art. 31 Montreal Convention 1999 stipulate twenty-one days.

¹⁵⁴ Art. 19 Warsaw-system conventions and Montreal Convention 1999.

a. **"All necessary measures"**

122. The international air conventions (subject to the change introduced by the Montreal Convention 1999 which is indicated within brackets) provide¹⁵⁵ that the air carrier is liable, unless he can prove a) that he and his servants and agents took "*all necessary measures*" (or, "*all measures that could reasonably be required*") to avoid the damage, or b) that "*it was impossible ... to take such measures.*"

123. The Warsaw-system conventions use the phrase "*all necessary measures*", which has been construed by the courts to mean that the carrier should prove that he took "*all reasonably necessary measures.*"¹⁵⁶ This interpretation is reinforced by the wording of the Montreal Convention 1999 which replaces the phrase "*all necessary measures*" with the phrase "*all measures that could reasonably be required to avoid the damage.*" In practice, the defence is quite difficult to establish and is therefore rarely successfully invoked in litigation.

124. If the carrier is not successful in establishing that he or his servants and agents took "*all reasonably necessary measures*", he may still be exempt from liability if he proves that "*it was impossible [for them] to take such measures*". For example, when a flight is prevented by an unexpected natural disaster, such as a typhoon or a volcanic eruption, the carrier would not be liable, as it would be plainly impossible for a carrier to take measures to prevent such an event.¹⁵⁷

125. It is worth pointing out that the Warsaw Convention 1929 and the Warsaw-Hague Convention 1955 provide,¹⁵⁸ that the carrier may use the defence of "*all necessary measures*" in respect of **a claim for loss, damage, or delay to cargo**. In contrast, the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999 restrict the availability of the defence of "*all necessary measures*" (or, "*all measures that could reasonably be required*") to **a claim for damage caused by delay in the carriage of cargo**.¹⁵⁹

126. It should, however, also be noted that under the Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999, four specific defences have been added in respect of carriage of cargo, two of which (namely, "*inherent defect, quality or vice*" and "*defective packing*") are similar to those included in other international transport conventions.¹⁶⁰

¹⁵⁵ Art. 20 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955 make reference to "*agents*", whereas Art. 20 Warsaw-Hague-MAP 4 Convention 1975, and Art. 19 Montreal Convention 1999 make reference to "*servants and agents*".

¹⁵⁶ *Swiss Bank Corp. and Others v. Brink's-MAT Ltd and Others*, [1986] 2 Lloyd's Rep. 79, 96-97. The requirement has also been construed by courts to be more akin to the duty of "utmost care" required of road carriers under the CMR 1956 (La Convention relative au Contrat de Transport International de Marchandises par Route/The Convention on the International Carriage of Goods by Road), see *J.J. Silber v. Islander Trucking*, [1985] 2 Lloyd's Rep. 243. See further Shawcross, *Air Law*, para. 408.

¹⁵⁷ *DeVera v. Japan Airlines*, 24 Avi 18, 317 (SD NY, 1994).

¹⁵⁸ Art. 20 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955.

¹⁵⁹ Art. 20 Warsaw-Hague-MAP 4 Convention 1975, and Art. 19 Montreal Convention 1999.

¹⁶⁰ The four specific defences relevant to claims arising out of carriage of cargo are further considered below, in part B.III.3.d.

b. Negligent pilotage

127. The Warsaw Convention 1929 provides¹⁶¹ that the carrier is excused from liability if he can prove that the damage to the goods was caused by "*negligent pilotage or negligence in the handling of the aircraft or in navigation*", and that in all other respects the carrier and his agents "*have taken all necessary measures to avoid the damage*".

128. The defence of "*negligent pilotage*" is an unusual example of exemption from liability in cases of negligence. In view of the considerable technological progress in air navigation equipment since the Warsaw Convention 1929, the defence of "*negligent pilotage*" became unnecessary and difficult to justify. Thus, the defence of "*negligent pilotage*" has not been reproduced in the other Warsaw-system conventions or the Montreal Convention 1999, and is only available in cases where the unamended Warsaw Convention 1929 applies.

c. Contributory negligence of the claimant

129. Under all of the international air conventions, the carrier is wholly or partly relieved from liability if he proves that negligence on the part of the claimant caused or contributed to the loss, damage, or delay in question. There are, however, some differences between the relevant provisions in the various international air conventions.

130. The Warsaw Convention 1929 and Warsaw-Hague Convention 1955 provide¹⁶² that the carrier may be exonerated wholly or partly from liability if he proves that the damage "*was caused by or contributed to by the negligence of the injured person*". In the context of carriage of cargo, the negligence must be attributable to the claimant, i.e. the consignor or the consignee.

131. The Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999 make two main additions to the text of the Warsaw Convention 1929 and Warsaw-Hague Convention 1955. They provide¹⁶³ that the carrier may be exonerated wholly or partly from liability if he proves that the damage was caused or contributed to by the negligence, or "*other wrongful act or omission*" of the person claiming compensation, or "*the person from whom he derives his rights*". The additional phrase of "*other wrongful act or omission*" appears to refer to acts which are deliberate rather than negligent.¹⁶⁴ Examples of such acts are false declarations of weight or content giving rise to delay in customs clearance, or a knowing failure to provide documents essential to avoid seizure of the cargo upon arrival by customs.¹⁶⁵

132. The question of whether there was in fact any contributory negligence and the question of how losses in these cases are to be attributed as between the claimant and the defendant depend upon the facts of each case and are determined by the law of the court before which a case is brought.¹⁶⁶

¹⁶¹ Art. 20 (2) Warsaw Convention 1929.

¹⁶² Art. 21 Warsaw Convention 1929 and Warsaw-Hague Convention 1955.

¹⁶³ Art. 21 (2) Warsaw-Hague-MAP 4 Convention 1975, and Art. 20 Montreal Convention 1999.

¹⁶⁴ See Clarke & Yates, *Land and Air*, para. 3.259.

¹⁶⁵ *KLM v. Tanneries des Cuirs*, Paris 06.06.2001, BTL 2001.664.

¹⁶⁶ The Warsaw Convention 1929 and Warsaw-Hague Convention 1955 make express reference to the law of the court seized of the case to determine whether and to which extent the carrier is exonerated from liability. This was not reproduced in the text of the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999.

d. Specific defences in relation to carriage of cargo

133. As was stated above, under the Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999, the carrier can rely on the defence of "*all necessary measures*" only with regard to damage caused by *delay* in the carriage of cargo.

134. However, in relation to claims arising from loss of or damage to cargo, the Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999 provide¹⁶⁷ that the carrier disposes of four additional specific defences, namely:

- (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 connection with the entry, exit, or transit of the cargo*".

135. The first two specific defences, "*inherent defect, quality or vice*" and "*defective packing*" are also encountered in other transport conventions. Whilst interpretation of the defences may vary between jurisdictions, some degree of uniformity in interpretation has developed.¹⁶⁸

136. As concerns the English view, a leading commentator states, by way of summary: "[a]n inherent vice (or defect) is a defect in cargo which by its development through ordinary processes within the cargo itself tends to the injury or destruction of that same cargo, to such an extent that it does not survive the normal rigours of the journey in question and remain suitable for use in commerce for a reasonable time after the end of the journey."¹⁶⁹ "Packing is defective, if its state is such that the particular goods are unable to withstand the dangers of normal transit of the kind contemplated by the particular contract of carriage."¹⁷⁰

137. The last two specific defences, "*an act of war*" or "*an act of public authorities*", refer to instances of armed hostilities and the enforcement of customs, excise, trade, embargo or quarantine regulations, respectively.

138. There is one important difference between the Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999 in respect of these four defences. Under the Warsaw-Hague-MAP 4 Convention 1975, the air carrier needs to prove that that the destruction, loss of, or damage to cargo resulted "*solely*" from one or more of the above four defences. A literal interpretation of the word "*solely*" would mean that the carrier's four specific defences would be very difficult to prove. An English court held¹⁷¹ that the right approach was to "*look at the adventure as a whole*" and the judge concluded that it was sufficient for a successful defence

However, it is submitted that a finding of negligence (including its extent) is always a matter for the *lex fori*. See further Shawcross, *Air Law*, para. 421.

¹⁶⁷ Art. 18 (3) Warsaw-Hague-MAP 4 Convention 1975, and Art. 18 (2) Montreal Convention 1999.

¹⁶⁸ See further Clarke & Yates, *Land and Air*, para. 3.250. Note also text in fn. 57, above.

¹⁶⁹ See Clarke & Yates, *Land and Air*, para. 3.251. For an interesting discussion of the concept and a review of earlier case-law see *Noten v. Harding*, [1990] 2 Lloyd's Rep. 283 (C.A.), a marine insurance case.

¹⁷⁰ See Clarke & Yates, *Land and Air*, para. 3.252. Note that in English law packing is considered as part of the cargo.

¹⁷¹ *Winchester Fruit Ltd v. American Airlines Inc.*, [2002] 2 Lloyd's Rep. 265 (276).

by the carrier that the inherent vice in the goods was the "*dominant cause of their deterioration*". In the corresponding provision of the Montreal Convention 1999, the word "*solely*" has been removed. Thus, evidence that the carrier was or should have been aware, for example, of defective packing, may not necessarily defeat the defence in question altogether.¹⁷²

4. Financial limitation of carrier's liability

139. The international air conventions limit the air carrier's liability for loss, damage, or delay to cargo to a certain maximum amount (also called monetary cap).

a. General

140. The monetary cap limiting the liability of the air carrier for cargo is essentially the same under all the international air conventions. However, under the Warsaw Convention 1929 and the Warsaw-Hague Convention 1955, it is expressed in the monetary unit of gold francs (250 gold francs per kilogram). Under all the other, more recent international air conventions,¹⁷³ it is expressed in the monetary unit of SDR (17 SDR per kilogram). The main advantage of using the monetary unit of the SDR, rather than the gold franc, is that it creates certainty for carriers and cargo interests as to the value of any compensation that may be payable. The exchange rate of the SDR in relation to major currencies is published daily by the IMF.¹⁷⁴ As the SDR is calculated by reference to a basket of generally stable currencies, the use of the SDR as a monetary unit of account safeguards against the erosion of the liability limits by inflation.

141. In contrast, in respect of the Warsaw Convention 1929 and Warsaw-Hague Convention 1955, the difficult issue arises which exchange rate is to be used when converting gold francs to today's currency. This may vary greatly depending on the jurisdiction where a dispute is resolved.¹⁷⁵

142. The Warsaw Convention 1929 makes reference to the "*French franc consisting of 65.5 milligrams gold of millesimal fineness 900*"¹⁷⁶ (which was the actual currency in use in France between 1928 and 1937). It also provides that the amount of gold francs (i.e. 250 gold francs) "*may be converted into any national currency in round figures.*"¹⁷⁷ The original cargo limit of 250 gold francs per kilogram amounted to some US\$ 10, at the rates of exchange prevailing in 1929.¹⁷⁸

143. The Warsaw-Hague Convention 1955 adds that the conversion of 250 gold francs into national currency other than gold "*shall, in case of judicial proceedings, be made according*

¹⁷² See Clarke & Yates, *Land and Air*, para. 3.589.

¹⁷³ Warsaw-MAP 1 Convention 1975, Warsaw-Hague-MAP 2 Convention 1975, Warsaw-Hague-MAP 4 Convention 1975, and Montreal Convention 1999.

¹⁷⁴ See, www.imf.org.

¹⁷⁵ See in some detail Shawcross, *Air Law*, paras. 422 to 428. For discussion of different possible approaches, see also *SS Pharmaceutical Co. Ltd. v. Qantas Airways Ltd.* [1989] 1 Lloyd's Rep. 319 (NSW SC), affirmed without reference to this issue at [1991] 1 Lloyd's Rep. 288 (NSW CA).

¹⁷⁶ Art. 22 (4) Warsaw Convention 1929.

¹⁷⁷ *Ibid.*

¹⁷⁸ See Shawcross, *Air Law*, para. 106 stating that 125,000 gold francs amounted to some US\$ 5,000 at the rates of exchange prevailing in 1929.

to the gold value of such currencies at the date of the judgment."¹⁷⁹ Therefore, many countries enacted legislation prescribing the equivalent, in their national currency, of the Warsaw Convention 1929 limits. However, often that legislation has not been revised to take account of inflation over the past fifty or so years. Even when a country does have an official value of its currency in terms of gold, that official value may deviate significantly from the free market value. This creates additional uncertainty for the various parties involved in the contract of carriage.

144. In order to ensure greater stability of the liability limits, some Contracting States to the unamended Warsaw Convention 1929, or the Warsaw-Hague Convention 1955, (or States whose trading partners include such States) have adopted the SDR as the relevant unit of account, at the exchange rate used in MAP 1 1975 and MAP 2 1975, i.e. one SDR equalling fifteen gold francs,¹⁸⁰ and have enacted national legislation to this effect. However, this practice is not uniform.¹⁸¹

b. Special declaration of value

145. Under the international air conventions, the liability of the carrier is limited to a sum of 250 gold francs¹⁸² or 17 SDR per kilogram,¹⁸³ unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value¹⁸⁴ and has paid a supplementary sum, if so required. If a special declaration of value has been made, the carrier's liability may not exceed the declared sum, except if the carrier proves that the consignor has declared a value which is greater than the actual value of the package at delivery.

146. In commercial practice carriers commonly provide in their conditions of contract for an acknowledgment by the consignor that he has had the opportunity to make a special declaration of the value of the goods at delivery and identifying as the special declaration the entry on the air waybill of a "declared value for carriage."¹⁸⁵

c. Calculation of the limit

147. The financial limitation of the carrier's liability is calculated on a per kilogram basis.

148. Under the Warsaw Convention 1929, where only a part of a consignment of goods is lost, damaged or delayed, the carrier's liability is calculated by reference to the **actual weight** of the lost, damaged, or delayed goods.¹⁸⁶

¹⁷⁹ Art. 22 (5) Warsaw-Hague Convention 1955.

¹⁸⁰ Shawcross, *Air Law*, para. 428, fn.1.

¹⁸¹ For an overview, see Shawcross, *Air Law*, para. 109 fn. 6 and para. 428

¹⁸² Art. 22 (2) Warsaw Convention 1929 and Warsaw-Hague Convention 1955.

¹⁸³ Art. 22 (2) (b) Warsaw-Hague-MAP 4 Convention 1975, and Art. 22 (3) Montreal Convention 1999.

¹⁸⁴ The phrase "*special declaration of value*" used in Art. 22 (2) Warsaw Convention 1929 is replaced by the phrase "*special declaration of interest*" in Art. 22 (2) Warsaw-Hague Convention 1955, Art. 22 (2) (b) Warsaw-Hague-MAP 4 Convention 1975, and Art. 22 (3) Montreal Convention 1999. The difference in wording is semantic. The phrase "*special declaration of value*" will be used throughout this report.

¹⁸⁵ Shawcross, *Air Law*, para. 604 and fn. 7 and 8.

¹⁸⁶ The actual gross weight of the goods will provide the relevant data, unless the terms of the air waybill provide otherwise. See *CPH International Inc. v. Phoenix Assurance Co. of New York* (SD NY, 1994), where the effect of the air waybill was that the "chargeable weight" (which was five times higher than the gross weight), used to determine the transportation charge, was to be relied upon.

149. All the other international air conventions contain an additional provision which is more advantageous to the cargo owner. Namely, if the loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, **the total weight** of such package or packages shall also be taken into consideration in determining the limit of liability. In other words, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited is not only the total weight of the package or packages lost, damaged, or delayed, but also the weight of those other packages whose value has been affected as a result.¹⁸⁷

5. Carrier may lose the benefit of the financial limitation of his liability in certain circumstances: "wilful misconduct" or "recklessness"

150. Under the Warsaw Convention 1929 a carrier may not rely on the monetary cap limiting his liability in cases where the carrier or any of his agents acting within the scope of their employment are guilty of "wilful misconduct."¹⁸⁸ This affects also cases where a special declaration of value at delivery has been made.¹⁸⁹ In these cases, the carrier's liability will, therefore, not be limited to the declared value.

151. "Wilful misconduct" is not defined in the Warsaw Convention 1929, but would seem to require a degree of intention or subjective recklessness.¹⁹⁰ According to the relevant provision,¹⁹¹ the same consequences arise in cases of "wilful misconduct", or "such default ... [by the carrier or his agents acting within the scope of their employment] as, in accordance with the law of the Court seised of the case is considered to be equivalent to wilful misconduct". Therefore, the Warsaw Convention 1929 leaves the determination of whether or not the carrier or his agents acting within the scope of their employment are guilty of the relevant misconduct to the law of the court before which a case is brought.¹⁹²

152. The Warsaw-Hague Convention 1955 sought to clarify the meaning of the term "wilful misconduct" and replaced it¹⁹³ with the phrase "act or omission [of the carrier or his servants or agents acting within the scope of their employment] ... done with intent to cause damage or recklessly and with knowledge that damage would probably result."¹⁹⁴

¹⁸⁷ Art. 22 (2) (b) Warsaw-Hague Convention 1955, Art. 22 (2) (c) Warsaw-Hague-MAP 4 Convention 1975, and Art. 22 (4) Montreal Convention 1999.

¹⁸⁸ Art. 25 Warsaw Convention 1929.

¹⁸⁹ See for instance *Antwerp United Diamonds BVBA and the Excess Insurance Co. Ltd. v. Air Europe* [1993] 4 All E.R. 469 and [1995] 3 All E.R. 424 (C.A.).

¹⁹⁰ The term "wilful misconduct" is used in other international conventions, (for example, in Art. 29 CMR), and has been interpreted as requiring either intention or subjective recklessness. In other words, the carrier must know of the risk and acts or fails to act regardless of the consequences. For example, in one case (*Agrippina v. KLM* (Milan, 20 February 1964), (1967) 6 *Dirito Aereo* 170.) gold jewellery valued at US\$ 5,000 was stolen at Kennedy Airport, New York. There was evidence of wilful misconduct in that the packages had been left unguarded for approximately one hour. However, wilful misconduct does not include negligence, even gross negligence. See further, Shawcross, *Air Law*, paras. 666 to 680, and Clarke & Yates, *Land and Air*, para. 3.150.

¹⁹¹ Art. 25 Warsaw Convention 1929.

¹⁹² For the approach taken by English courts in examining the issue, see *The Thomas Cook Group Ltd. v. Air Malta Company Ltd.* [1997] 2 Lloyd's Rep. 399 at 407; *Goldman v. Thai Airways International Ltd.* [1983] 3 All E.R. 693 at 698 (C.A.).

¹⁹³ Art. 25 Warsaw-Hague Convention 1955.

¹⁹⁴ There is a great deal of case-law on this question, much in relation to personal injury claims, rather than cargo claims, and views vary between different jurisdictions. In determining whether there has been any relevant misconduct, U.S. courts appear to focus more on an "objective" view of the circumstances, see *Ospina v. TWA*, 24 Avi. 17, 109 (2 Cir., 1992); *Cortes v. American Airlines Ltd.*, 177 F. 3d 1272, 1291 (11 Cir., 1999). In

153. A case relevant to damage to cargo,¹⁹⁵ where the issue of interpretation of this phrase arose was decided in Australia.¹⁹⁶ The carrier's agents could see marks on the cargo indicating that it should be stored in the dry, as well as note the poor state of the plastic wrapping. Moreover, it was raining at the time and apparent that a typical Sydney summer thunderstorm was likely. Nonetheless, the carrier's agents left the cargo uncovered in the open, exposed to the storm. The court found that the agents of the carrier "*must have known that such 'deplorably bad handling' of the cargo would probably result in damage to the cargo*". As a result, the carrier was deprived of the right to limitation of liability.¹⁹⁷

154. The effect of a finding of "*wilful misconduct*", both under the Warsaw Convention 1929 and the Warsaw-Hague Convention 1955, is that the carrier loses the benefit of the monetary cap limiting his liability. The carrier will however, not be liable beyond any actual loss proven by the claimant.¹⁹⁸

155. It is important to note that under the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999 the financial limitation of the carrier's liability is "unbreakable", as the relevant provisions on the effects of serious misconduct¹⁹⁹ do not apply to the carriage of cargo. This is a major change which simplifies the settlement of claims related to cargo and avoids lengthy and costly litigation. However, it also means that a consignor may have a greater incentive to provide a declaration of value for inclusion in the air waybill. Otherwise, even in cases of intentional misconduct of the carrier, any compensation would be limited to 17 SDR per kilogram.

6. Liability of servants or agents of the carrier

156. The carrier is generally accountable for the acts or omissions of his servants or agents, in particular, his employees. However, a separate question is whether or not servants or agents of the carrier may be sued in their own right by a cargo claimant. This depends on many factors, such as the available evidence, the financial solvency of the servants or agents of the carrier, and issues of jurisdiction (i.e. may vary according to the law applicable in the place where a claim is instituted). The courts in some States do not allow a direct action by the

contrast, English courts have tended to focus more on the actual awareness of the person, see *Horobin v. BOAC* [1952] 2 All E.R. 1016 at 1022 and *Gurtner v. Beaton* [1993] 2 Lloyd's Rep. 369 at 387 (C.A.), but it appears that this view may be changing; see for instance the discussion of the question by Auld, L.J. and Dyson, J. in *Nugent and Killick v. Michael Goss Aviation Ltd. and Others* [2000] 2 Lloyd's Rep. 222 at 227 (C.A.) and 232-233. For a good overview over relevant case-law, see Shawcross, *Air Law*, paras. 446 to 461 and Clarke & Yates, *Land and Air*, paras. 3.147 to 3.160.

¹⁹⁵ Reported decisions involving injury or death of passengers should be read with caution as some courts, especially in the USA, regarding the monetary cap on the carrier's liability for passengers as too low, have been more ready than most to make a finding of "*wilful misconduct*".

¹⁹⁶ *SS Pharmaceuticals v. Qantas*, [1991] 1 Lloyd's Rep. 288 (NSW CA).

¹⁹⁷ See also *Ericsson Ltd. and Ericsson Mobile Communications AB v. KLM Royal Dutch Airlines and ors.* [2005] HKEC 2121, a decision at first instance by the High Court of Hong Kong. There, cargo had been stolen with "inside involvement" of the cargo handling company. It was held that the contracting carrier, the actual carrier, as well as the cargo handlers, as agents, were deprived of the right to limit their liability under the Warsaw-Hague Convention 1955 and the Guadalajara Convention 1961, because the theft amounted to an act done "*with intent to cause damage*".

¹⁹⁸ Please note that there are no punitive damages under the Warsaw-system conventions or the Montreal Convention 1999. See Art. 29 Montreal Convention 1999, and *Re Air Disaster at Lockerbie*, 928 F. 2d 1267 (2 Cir., 1991).

¹⁹⁹ Art. 25 and 25 A Warsaw-Hague-MAP 4 Convention 1975 only apply to passengers and baggage and not to cargo. Similarly, Art. 22 (5), and Art. 30 (3) Montreal Convention 1999, do not apply to cargo.

cargo claimant against the servants or agents of the carrier, as they are not parties to the contract of carriage, and therefore are not under any contractual obligation. However, there may be liability of such parties in delict or tort.²⁰⁰

157. All the international air conventions, with the exception of the Warsaw Convention 1929, contain a specific provision,²⁰¹ which states that "[i]f an action is brought against a servant or agent of the carrier [for damage, loss, or delay to cargo under the international air conventions] ... such servant or agent ... shall be entitled to avail himself (themselves) of the limits of liability (of the conditions and limits of liability)²⁰² which the carrier ... is entitled to invoke ... ". This is subject to one condition, namely the servant or agent must prove that "he acted within the scope of his employment".

158. The meaning of "servants and agents" is a question of national law, which may be interpreted differently in various jurisdictions. Usually, the term "servants" refers to those with whom the carrier has entered into a contract of employment, and the term "agents" refers to independent contractors with whom the carrier has contracted for the performance of a specified task.²⁰³

159. To benefit from the monetary limitation of liability under the conventions, the servants or agents need to prove that they were "acting within the scope of their employment". This is again an issue for national law and has been interpreted differently by courts in various jurisdictions.²⁰⁴ Strike action is usually considered to be outside the scope of one's employment,²⁰⁵ whereas theft of goods by a cargo loader has been held to be within the scope of employment.²⁰⁶

160. If an action is brought against both servants or agents of the carrier and the carrier, "the aggregate of the amounts recoverable"²⁰⁷ from the carrier, and his servants or agents, is limited to the monetary cap limiting the carrier's liability, i.e. 17 SDR per kilogram or the amount of any special declaration of value at delivery.

²⁰⁰ See further Shawcross, *Air Law*, para. 645.

²⁰¹ Art. 25A(1) Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975, Art. 30(1) Montreal Convention 1999.

²⁰² Words within brackets reflect the text of Article 30(1) of the Montreal Convention 1999.

²⁰³ For the purposes of the international air conventions, arguably, a distinction needs to be made between agents performing services in furtherance of the contract of carriage, such as those performed by certain airport security services, and agents whose role does not involve activities directly related to the carriage of cargo (for example those engaged in the maintenance or repair of the carrier's aircraft). See, Shawcross, *Air Law*, para. 644.

²⁰⁴ For further discussion and references, see Shawcross, *Air Law*, para. 462 and Clarke & Yates, *Land and Air*, para. 3.167. For instance, where an employee profits from knowledge of valuable cargo acquired during working hours to steal after hours, the question arises as to whether he acted within the scope of his employment. The answer to this question may not only depend on the specific facts of the case, but also on the views adopted by courts in the relevant jurisdiction. See, French Cour de Cassation in *Saint-Paul Fire Co. v. Air France*, 22 July 1986, (1986) 40 RFDA 428 and *Air France v. United Commercial Agencies Ltd*, (1988) 1 S& B Av R VII/293, (Cour de Cass., 12 January 1988). See also Federal Court of Appeal of Canada in *Swiss Bank v. Air Canada* (1982) 129 D.L.R. (3rd) 85, 104-105.

²⁰⁵ *OLG Stuttgart*, 24.02.93, TranspR 1995, 74.

²⁰⁶ See *Rustenburg Platinum Mines Ltd. v. South African Airways and Pan American World Airways Inc.* [1977] 1 Lloyd's Rep. 564 at 576, where the court held that "it was clearly part of [the cargo loader's] duty to take reasonable care of the package during the operation of loading and stowing it on the aircraft". The decision was confirmed at appeal, see [1979]1 Lloyd's Rep. 19.

²⁰⁷ Art. 25A (2) Warsaw-Hague Convention 1955 and Warsaw-Hague-MAP 4 Convention 1975, Art. 30 (2) Montreal Convention 1999.

161. Under the Warsaw-Hague Convention 1955,²⁰⁸ the servants and agents lose the benefit of the monetary cap limiting their liability "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". Therefore, if the servants and agents of the carrier, are guilty of "wilful misconduct" or "recklessness" they face potentially unlimited liability, subject of course to the claimant proving his loss and the amount thereof.²⁰⁹ Under the Warsaw-Hague-MAP 4 Convention 1975 and the Montreal Convention 1999, in relation to the carriage of cargo, the monetary cap limiting the liability of the servants and agents is "unbreakable",²¹⁰ in the same way as it is "unbreakable" for the carrier.²¹¹

IV. Liability of "successive", and "actual" carriers

162. In principle, the international air conventions regulate the contractual liability, i.e. the liability arising out of "international carriage" as defined, according to the "contract made by the parties" (or "agreement between the parties").²¹² The party which undertakes to perform the carriage in accordance with the contract of carriage is referred to as the carrier, or the "contracting" carrier.

163. As has been stated above,²¹³ "successive" carriage performed by several "contracting" carriers, even if performed under multiple air waybills is treated as undivided carriage if the carrier and the consignor considered it as such.²¹⁴ An example would be where a consignor contracts with one carrier ("contracting" carrier), for carriage from point A to point B, and from point B to point C, but it is agreed from the outset that the last stage from point B to point C is to be performed by another "successive" carrier.

164. A "successive" carrier needs to be distinguished from an "actual" carrier, to whom a "contracting" carrier sub-contracts the performance of the carriage, or part thereof. An "actual" carrier, in contrast to a "successive" carrier, is not a party to the contract of carriage. Therefore, the question arises as to the liability of such an "actual" carrier, if damage occurs during the part of the carriage sub-contracted and performed by the "actual" carrier.²¹⁵

165. The Guadalajara Convention 1961 was concluded to extend the rights and obligations of a carrier to any sub-contracting "actual" carrier. As stated earlier, the Guadalajara Convention 1961 is supplementary to both the Warsaw Convention 1929 and the Warsaw-

²⁰⁸ The Warsaw Convention 1929 does not include the specific provisions on the liability of servants or agents of the carrier added by Art. 25 A Warsaw-Hague Convention 1955.

²⁰⁹ On this point, see, for instance, *Ericsson v. KLM*, fn. 197, above.

²¹⁰ Art. 25 A (3) Warsaw-Hague-MAP 4 Convention 1975, and Art. 30 (3) Montreal Convention 1999 do not apply in relation to carriage of cargo.

²¹¹ In relation to the carrier's "wilful misconduct" or "recklessness", see above, part B.III.5.

²¹² Art. 1 (2) Warsaw-system conventions, and words within brackets Art. 1 (2) Montreal Convention 1999.

²¹³ At para. 61.

²¹⁴ Art. 1 (3) Warsaw-system conventions and Montreal Convention 1999.

²¹⁵ The practice of subcontracting the performance of carriage to another carrier came about through the need to market as wide a network of routes as possible, through agreements between carriers, called code-sharing. Under a code-share agreement, two air carriers agree that they will each use their unique two-letter code (allocated to each airline by IATA), to sell cargo space on flights operated by the other carrier. Code-sharing is different from "blocked-space arrangements", whereby an airline allocates cargo space on the flight of another airline. It is also different from "inter-line agreements", whereby two or more carriers agree to mutually accept air waybills issued by the other, see para. 61, above.

Hague Convention 1955. Its provisions have also been incorporated, largely unchanged, as chapter V in the Montreal Convention 1999.

1. Definitions

166. The terms "*contracting*" and "*actual*" carriers are defined²¹⁶ in the Guadalajara Convention 1961 as follows:

- "*contracting*" carrier is a person who "*as a principal*"²¹⁷ makes an agreement for carriage" governed by the international air conventions with a consignor or with a person acting on his behalf; and
- "*actual*" carrier is another person who "*performs the whole or part of the carriage*" contemplated by the agreement between the "*contracting*" carrier and the consignor by virtue of authority from the "*contracting*" carrier. Such authority shall be presumed in the absence of proof to the contrary.

167. In the definition of "*actual*" carrier, it is further specified that an "*actual*" carrier is not a "*successive*" carrier.

- "*Successive*" carriage occurs when carriage is undertaken by two or more carriers, "*regarded by the parties as a single operation*",²¹⁸ but agreed either in the form of a single contract or under a series of contracts.

168. Therefore, "*successive*" carriage is divided into separate and successive stages, both in terms of time and place, which are identifiable from the outset, i.e. when the contract is made. What is important is the intention of the parties at the time the contract of carriage was agreed on.

169. Some illustrative examples of "*successive*" carriage are the following:²¹⁹

- A consignor contracts with a carrier for carriage from point A to point B, and from point B to point C, and the carrier's timetables (which form part of the contract of carriage) indicate that part of the journey is to be performed by another carrier.²²⁰
- A consignor contracts with a carrier for carriage from point A to point B, and from point B to point C, but, for marketing reasons, the carriage is identified as a single flight bearing a joint designator code²²¹ identifying the two carriers involved in the carriage.
- A consignor contracts with a carrier for carriage from point A to point B, and from point B to point C, but, for marketing reasons, the carriage is identified as a single flight bearing the designator code of only one of the carriers, and the carrier's timetables (which form part of the contract of carriage) make the use of two carriers clear to the consignor.

²¹⁶ Art. I Guadalajara Convention 1961, Art. 39 Montreal Convention 1999.

²¹⁷ It is important that the "*contracting*" carrier is a party who concludes a contract of carriage as a principal and not as an agent for another carrier.

²¹⁸ Art. 1 (3) Warsaw-system conventions and Montreal Convention 1999.

²¹⁹ See Shawcross, *Air Law*, para. 381.

²²⁰ *Haldimann v. Delta Airlines Inc.*, 168 F 3d 1324 (DC Cir. 1999).

²²¹ A unique two-letter code allocated to each airline by IATA.

170. In cases of "*successive*" carriage, each carrier is "*deemed to be one of the parties to the contract of carriage [for the part of the carriage] performed under its supervision.*"²²² Thus, "*successive*" carriers are deemed to be "*contracting*" carriers. In contrast, "*actual*" carriers are not parties to the contract of carriage, as their involvement in the performance of the carriage is not agreed on and evident from the outset. A relevant scenario for "*actual*" carriage could be the following:

- Under a code-sharing agreement, an airline with designator code AA (airline AA) is operating freight services from Asia to Europe, and another airline with designator code BB (airline BB) is operating freight services from Europe to the Americas. The two airlines agree that airline AA will sell cargo space on the freight services operated by airline BB from Europe to the Americas, *by using its own designator code, AA*. By the same token, airline BB will sell cargo space on the freight services operated by airline AA from Asia to Europe, *by using its own designator code, BB*.

171. The distinction between "*successive*" and "*actual*" carriage is important, because the liability provisions applicable under the international air conventions are different, depending on the type of carriage identified.

2. Liability of "*successive*" carriers

172. All of the international air conventions state (in the relevant definition provisions)²²³ that carriage to be performed by several "*successive*" carriers is deemed to be "*one undivided carriage*" if the parties from the outset regarded it as a single operation, whether one or more air waybills were issued. In addition, "*successive*" carriage "*does not lose its international character*" because one or more stages are to be performed entirely within the territory of the same State.²²⁴

173. The above provisions are particularly important in deciding whether the "*successive*" carriage is "*international carriage*", as defined, and thus governed by the international air conventions. For example, a consignor contracts with carrier AA for carriage from Seoul (Republic of Korea) to Anchorage (USA), from Anchorage (USA) to Chicago (USA), and from Chicago (USA) to San Francisco (USA). The last stage (Chicago to San Francisco) is to be performed by carrier BB. The carriage from Seoul to Anchorage to Chicago to San Francisco is deemed to be "*one undivided carriage.*" Further, whilst the Chicago to San Francisco stage is performed entirely within the territory of the same State (USA), the carriage is nonetheless international carriage. For the purposes of determining that the carriage is "*international*" it does not matter that one or more air waybills have been issued.

174. The international air conventions provide that each carrier who accepts cargo (in the example above, carrier AA, and carrier BB) is subject to the rules of the applicable international air 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 (its) supervision.*"²²⁵ Therefore, the provisions of the applicable

²²² Art. 30 (1) Warsaw-system conventions, and Art. 36 (1) Montreal Convention 1999.

²²³ Art. 1 (3) Warsaw-system conventions and Montreal Convention 1999.

²²⁴ *Ibid.*

²²⁵ Art. 30 (1) Warsaw-system conventions, and Art. 36 (1) Montreal Convention 1999.

international air convention apply to each "*successive*" carrier, if the cargo comes effectively into his possession,²²⁶ and if he has performed the carriage.²²⁷

175. In terms of who may be sued, the international air conventions provide²²⁸ that **the consignor has a right of action against the first "*successive*" carrier**, who is usually identified as the first carrier in the air waybill and is often the one who actually contracted with the consignor. Further, "***the consignee who is entitled to delivery***" **has a right of action against the last "*successive*" carrier**. Moreover, if the stage of the carriage during which the "*destruction, loss, damage, or delay [of the goods] took place*" can be identified, **the consignor and the consignee, may each take action against the "*successive*" carrier who actually performed the carriage**.

176. All the international air conventions provide²²⁹ that "*these carriers will be jointly and severally liable*" to the consignor or consignee. In other words, if one of the aforementioned "*successive*" carriers is successfully sued, he is liable for the totality of the loss or damage, but he may be entitled to take recourse against another "*successive*" carrier.

3. Liability of "*actual*" carriers

177. As was stated above, "*actual*" carriers are neither "*contracting*" nor "*successive*" carriers and are thus not parties to the contract of carriage. The regime applicable to "*actual*" carriers is contained in the Guadalajara Convention 1961, and chapter V of the Montreal Convention 1999, incorporating the respective provisions largely unchanged.

178. In respect of the liability of the "*actual*" carrier, the Guadalajara Convention 1961 and the Montreal Convention 1999 provide²³⁰ that if the "*actual*" carrier performs the whole or part of the carriage, both the "*actual*" and "*contracting*" carriers are liable. The "*actual*" carrier is liable for the part of the carriage which he performs and the "*contracting*" carrier is liable for the entire carriage contemplated in the contract. Therefore, if the damage to the cargo occurred during the part of the carriage performed by the "*actual*" carrier, the claimant may sue the "*actual*" and/or the "*contracting*" carriers, either jointly or separately.

179. If the claimant sues only one carrier, that carrier is entitled to require the other carrier to be joined in the proceedings, in accordance with the law of the court seized of the case.²³¹ Thus, the "*contracting*" carrier cannot decline liability on the basis that the damage occurred during the part of the carriage performed by the "*actual*" carrier. As between themselves, the "*actual*" and "*contracting*" carriers may agree as to their respective rights and obligations, including the right of recourse or indemnification.²³²

²²⁶ Shawcross, *Air Law*, paras. 606, with reference to *Wright v. TACA International Airlines* (1984) 2 S&B Av R VII/119 (Belize CA, 1984).

²²⁷ Shawcross, *Air Law*, paras. 606, with reference to *Emery Air Freight Corp v. Nerine Nurseries Ltd* [1997] 3 NZLR 723 (NZ, CA).

²²⁸ *Ibid.*

²²⁹ Art. 30 (3) Warsaw-system conventions, and Art. 36 (3) Montreal Convention 1999.

²³⁰ Art. II Guadalajara Convention 1961, and Art. 40 Montreal Convention 1999.

²³¹ Art. VII Guadalajara Convention 1961, and Art. 45 Montreal Convention 1999.

²³² Art. X Guadalajara Convention 1961, and Art. 48 Montreal Convention 1999, which specifies that each carrier has the "right of recourse or indemnification" against the other.

180. Further, the Guadalajara Convention 1961 and the Montreal Convention 1999 provide²³³ that the limit of liability under the international air conventions applies to each one of them individually and to their respective servants and agents acting within the scope of their employment. Moreover, the aggregate damages awarded against the "*actual*" carrier, "*contracting*" carrier, or their servants and agents may not exceed the highest amount that the claimant would recover by suing either the "*actual*" carrier or the "*contracting*" carrier.

181. The "*actual*" and "*contracting*" carriers are, in principle, accountable for each others acts and omissions²³⁴ (and that of their respective servants or agents),²³⁵ in respect of the part of the carriage performed by the "*actual*" carrier. However, an "*actual*" carrier is not accountable for any potential "*wilful misconduct*" or "*recklessness*" on the part of the "*contracting*" carrier and would therefore not lose the right to monetary limitation of liability.²³⁶ By the same token, if the "*contracting*" carrier by special agreement assumes obligations over and above the limit of 17 SDR per kilogram for cargo (for example, where the consignor has made a special declaration of value at delivery),²³⁷ these will not be binding on the "*actual*" carrier, unless he has agreed to them.²³⁸ Thus, an "*actual*" carrier's liability in relation to the carriage of cargo is capped at 17 SDR per kilogram, unless (a) he has agreed otherwise or (b) he is himself (or his servants or agents are) guilty of any relevant misconduct.²³⁹

182. The other provisions of the Guadalajara Convention 1961, and the Montreal Convention 1999, in relation to carriage performed by the "*actual*" carrier are to a large extent similar to the provisions already discussed in relation to the liability of air carriers.²⁴⁰

V. Liability of consignor to the air carrier

183. The international air conventions mainly deal with the air carrier's liability in case of loss, damage or delay of cargo, and the potential claimants are either the consignor or the consignee. However, the consignor has certain obligations related to the particulars included in the air waybill and the completion of required customs formalities, which may give rise to liability.

²³³ Art. VI Guadalajara Convention 1961, and Art. 44 Montreal Convention 1999.

²³⁴ Art. III Guadalajara Convention 1961, and Art. 41 Montreal Convention 1999.

²³⁵ Art. III Guadalajara Convention 1961, and Art. 41 Montreal Convention 1999. Art. V Guadalajara Convention 1961, and Art. 43 Montreal Convention 1999 also provide that servants and agents of the "*actual*" or "*contracting*" carriers, acting within the scope of their employment, benefit from the same limits of liability (or may lose such benefit) applicable to the carrier whose servant or agent they are.

²³⁶ Note, however, that under the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999, the limits of liability are in any event "unbreakable", in relation to carriage of cargo, see above, part B.III.5.

²³⁷ Art. 22 (2) Warsaw-system conventions, and Art. 22 (3) Montreal Convention 1999.

²³⁸ Art. III Guadalajara Convention 1961, and Art. 41 Montreal Convention 1999.

²³⁹ See, for instance, *Ericsson v. KLM*, fn. 197, above.

²⁴⁰ See, Art. IV Guadalajara Convention 1961, and Art. 42 of Montreal Convention 1999: notice of complaint may be addressed to the "*actual*" or "*contracting*" carrier, except that orders or instructions by the consignor to the carrier in the exercise of the consignor's right to dispose of the cargo prior to delivery may only be addressed to the "*contracting*" carrier. See also, Art. VIII Guadalajara Convention 1961, and Art. 46 of Montreal Convention 1999: provide for an additional jurisdiction, namely an action may be brought before the court of a country where the "*actual*" carrier is ordinarily resident, (or "*domiciled*", in the case of the Montreal Convention 1999) or has his principal place of business. This is in addition to the four places in which an action may be brought against the "*contracting*" carrier, pursuant to Art. 28 Warsaw-system conventions, and Art. 33 Montreal Convention 1999, see below, part B.VI.

184. First, all the international air conventions provide that the consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts,²⁴¹ or which he provides for insertion²⁴² in the air waybill, cargo receipt, or other record, as applicable. In commercial practice, air waybills are usually completed by the air carrier on behalf of the consignor, and on the basis of information furnished by the consignor or on his behalf. This is reflected in the wording of the relevant provision in the Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999. The Montreal Convention 1999 additionally includes a new sentence, which specifies that the consignor remains responsible for the correctness of the particulars in situations where the person acting on his behalf is also the agent of the carrier.

185. Under the Warsaw Convention 1929, the consignor is “*liable for all damage suffered by the carrier or any other person*” due to the irregularity, incorrectness or incompleteness of the particulars and statements relating to the goods, which he inserts in the air waybill.²⁴³ Under the other international air conventions, the position is similar, but this is expressed in terms of an obligation to “*indemnify the carrier against all damage*”, including third party liability, due to the “*irregularity, incorrectness or incompleteness*” of such particulars and statements.²⁴⁴ It is important to note that liability of the consignor to the carrier, which may potentially be considerable, is not subject to any monetary limit.²⁴⁵

186. The Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999 add a further provision²⁴⁶ which requires that the “*carrier shall indemnify the consignor against all damage*”, including third party liability, due to the “*irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf*” in the cargo receipt or other electronic record. This would include statements inserted by the carrier, for instance, as to relevant stopping places.²⁴⁷

187. Secondly, all the international air conventions provide²⁴⁸ that the consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police, and any other public authorities before the goods may be delivered to the consignee. In addition, under the Warsaw Convention 1929 and the Warsaw-Hague Convention 1955 the consignor must also attach the necessary documents to the air waybill.²⁴⁹

188. This is particularly important where dangerous goods are to be carried.²⁵⁰ The consignor must furnish the operator of the aircraft with a dangerous goods transport document, which must describe the dangerous goods as required by the latest edition of the Technical

²⁴¹ Art. 10 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955.

²⁴² Art. 10 (1) Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999.

²⁴³ Art. 10 (2) Warsaw Convention 1929.

²⁴⁴ Art. 10 (2) Warsaw-Hague Convention 1955, Warsaw-Hague-MAP 4 Convention 1975, and Montreal Convention 1999.

²⁴⁵ For example, if the cargo consignment includes illegal substances, subject to fines, and the seizure and release of the aircraft is made conditional on payment or forfeiture of the aircraft, see *Air Canada v. United Kingdom* (1995) 20 E.H.R.R. 150.

²⁴⁶ Art. 10 (3) Warsaw-Hague-MAP 4 Convention 1975 and Montreal Convention 1999.

²⁴⁷ *American Home Assur. Co. v. Jacky Maeder (Hong Kong Ltd.)*, 999 F. Supp. 543, 548 (S.D.N.Y., 1998).

²⁴⁸ Art. 16 (1) Warsaw-system conventions and Montreal Convention 1999.

²⁴⁹ Art. 16 (1) Warsaw Convention 1929 and Warsaw-Hague Convention 1955.

²⁵⁰ In future, this is also likely to become increasingly relevant in relation to the documentary requirements arising from international security regulations.

Instructions for the Safe Transport of Dangerous Goods by Air published by ICAO.²⁵¹ In addition, airline operators also require compliance with their own IATA “Dangerous Goods Regulations.”

189. 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 servants and agents.²⁵² The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents. Again, the liability of the consignor is not subject to any limit.

190. Ultimately, the consignor bears the responsibility for obtaining and providing the correct relevant information and documentation because he is in the best position to do so, and as a result he is liable to the carrier if the information or documentation is incorrect or insufficient.

VI. Jurisdiction

191. Issues of international jurisdiction are of great practical importance and often give rise to litigation, as the place where legal proceedings are commenced (the “forum”)²⁵³ may affect the substantive rules applicable to the liability of the air carrier. Ultimately, it is the law of the forum (including its conflict of law rules) that determines which, if any, of the international air conventions may be applicable.

192. Moreover, questions of procedure are governed by the law of the forum²⁵⁴ as are many issues that are not dealt with in the international air conventions. These include important matters, such as the measure and extent of compensatory damages (remoteness and quantum), the question of whether there has been any wilful misconduct/recklessness of the carrier or contributory negligence of the claimant and how liability should be apportioned.

193. The international air conventions provide²⁵⁵ that an action for damages may only be brought in a limited number of jurisdictions in places connected with the carrier, but also likely to be convenient for the claimant. In relation to cargo, the claimant has the option to bring an action for damages in the territory of one of the Contracting States to the applicable international air convention before the competent court at one of the following four places:

- a. where the carrier is "*ordinarily resident*" (the word "*domiciled*" is used in the Montreal Convention 1999), usually the place of incorporation; or
- b. where the carrier has his "*principal place of business*", usually the operational headquarters; or

²⁵¹ The Technical Instructions amplify the basic provisions of Annex 18 to the Convention on International Civil Aviation 1944 (as amended)- The Safe Transport of Dangerous Goods by Air. All Contracting States of ICAO are required to take the necessary measures to achieve compliance with the ICAO Technical Instructions. See further www.icao.org.

²⁵² Although this is not expressly noted, on the basis of general principles the burden of proving such fault would be on the claimant.

²⁵³ Normally, this refers to the country where legal proceedings are brought. However, in federal States, there may be a number of different jurisdictions. See further, Clarke & Yates, *Land and Air*, para. 3.176.

²⁵⁴ Art. 28 (2) Warsaw-system conventions, and Art. 33 (4) Montreal Convention 1999.

²⁵⁵ Art. 28 (1) Warsaw-system conventions, and Art. 33 (1) Montreal Convention 1999.

- c. where the carrier has "*an establishment* [the word "*business*" is used the Montreal Convention 1999] *by which the contract has been made*", usually where the air waybill is issued; or
- d. the place of destination, usually designated in the air waybill.

194. All the international air conventions provide²⁵⁶ that any "*clause ... and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by [the applicable international air convention], whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void*". Thus, exclusive contractual jurisdiction agreements are not permitted. However, in respect of carriage of cargo, arbitration clauses are permitted, provided that the arbitral proceedings are brought in one of the four optional jurisdictions specified, and provided the arbitrator or arbitration tribunal apply the provisions of the international air conventions.²⁵⁷

²⁵⁶ Art. 32 Warsaw-system conventions, and Art. 49 Montreal Convention 1999.

²⁵⁷ Art. 32 Warsaw-system conventions, and Art. 34 Montreal Convention 1999, which is clearer on this point.

Final remarks

195. In relation to the carriage of goods by air, there are a considerable number of different international legal regimes co-existing at the international level. This state of affairs creates a challenge, for policy-makers and legislators charged with developing appropriate national legislation, for judges and arbitrators involved in applying and interpreting the relevant law and for private parties engaged in air transportation. The main issues for consideration in this context, which have also been referred to elsewhere in this Report, are, due to their importance, again restated here as follows:

196. Whether one of the Warsaw-system conventions or the Montreal Convention 1999 applies to a claim arising from the carriage of goods by air is an important and, in practice, often complicated question. In all cases, the relevant criterion for the application of any one of the international air conventions and its corresponding legal regime is the concept of "*international carriage*", as defined uniformly in the various international legal instruments. ***Thus, all the international air conventions apply only in respect of carriage between two Contracting States to the same international air convention, or in respect of carriage within a single Contracting State, if an intermediary international stopover has been agreed.***

197. ***Each Contracting State to any one of the international air conventions needs to fully implement the respective international air conventions at the national level.*** In countries where an international agreement needs to be enacted into domestic legislation, this can be achieved in a number of ways, including through integrating the text of an international convention into existing legislation. However, in the interests of certainty and to avoid any conflict of laws issues between different Contracting States, it is important to aim at enacting legislation, which reproduces the totality of the provisions of any one of the international air conventions verbatim and without any changes.

198. In addition, it is important to note that ***national implementation of any of the international conventions will not achieve the intended result unless the respective convention has been ratified or acceded to.*** In this context, it should be recalled that the trigger for the application of the conventions is, in all cases, "*international carriage*" as defined, i.e. carriage involving *Contracting States*. Thus, a national enactment of an international convention without its ratification would not ensure application of the substantive convention provisions in a case where carriage involves that State. Even if the text of the national statute were to make it clear that carriage to or from that State should be covered by the convention in question, courts in other jurisdictions, which may be charged with deciding on a claim, would, most likely, not give effect to the relevant convention provisions, as the carriage would not involve a *Contracting State*. Thus, ***adoption of an international air carriage convention at the international level, through ratification or accession, is vital, to ensure that any relevant national enactment will be fully effective.***

199. In view of the complexities of the Warsaw-system conventions, there are clear practical advantages in adopting the Montreal Convention 1999, the latest and most modern and comprehensive of the international conventions in the field. However, unless and until the Montreal Convention 1999 becomes universally adopted, the Warsaw-system conventions and the Montreal Convention 1999 continue to co-exist. As a result, a country's trade with different trading partners may be governed by different international air conventions. ***In cases where more than one of the international conventions has been adopted by a State, particular care is required to ensure effective implementation of each of the international***

air conventions at the national level. The relevant national legislation needs to ensure the application of each international agreement in relation to trade involving Contracting States to that particular convention. This is vital in order to avoid unnecessary confusion among traders and to ensure the application of the relevant international air convention in respect of carriage between different trading partners.

Simplified Comparative Table of Limitation of Liability and Exceptions to Liability

		Passenger		Luggage Unregistered		Luggage Registered		Cargo	
		Personal Injury/Death	Delay	Loss/Damage	Delay	Loss/Damage	Delay	Loss/Damage	Delay
Warsaw Convention 1929	●monetary limit of carrier's liability	125,000 gold francs, except if "special contract", carrier-passenger agreeing higher limit.		5,000 gold francs/passenger.		250 gold francs/kg, except if passenger/consignor made special declaration of value and paid supplementary sum.			
	●loss of monetary limit of carrier's liability	If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct".	
	●defence of "all necessary measures"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
	●defence of "negligent pilotage"	Not applicable.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
	●defence of claimant's "contributory negligence"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
Hague Protocol 1955	●monetary limit of carrier's liability	250,000 gold francs (excl. legal fees/costs), except if "special contract", carrier-passenger agreeing higher limit.		5,000 gold francs/passenger (excl. legal fees/costs).		250 gold francs/kg (excl. legal fees/costs), except if passenger/consignor made special declaration of value and paid supplementary sum.			
	●loss of monetary limit of carrier's liability	If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".	
	●defence of "all necessary measures"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
	●defence of claimant's "contributory negligence"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
Guatemala City Protocol 1971 (not in force)	●monetary limit of carrier's liability	1.5 million gold francs (excl. legal fees/costs).	62,500 gold francs/passenger (excl. Legal fees/costs).	15,000 gold francs/passenger (excl. legal fees/costs).		250 gold francs/kg (excl. legal fees/costs), except if consignor made special declaration of value and paid supplementary sum.			
	●loss of monetary limit of carrier's liability	Not applicable.		Not applicable.		Not applicable.		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".	
	●defence of "all necessary measures"	Not applicable.	Available to the carrier.	Not applicable.	Available to the carrier.	Not applicable.	Available to the carrier.	Available to the carrier.	
	●defence of claimant's "contributory negligence"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	

Simplified Comparative Table of Limitation of Liability and Exceptions to Liability

		Passenger		Luggage Unregistered		Luggage Registered		Cargo	
		Personal Injury/Death	Delay	Loss/Damage	Delay	Loss/Damage	Delay	Loss/Damage	Delay
MAP 1 1975	●monetary limit of carrier's liability	8,300 SDR, except if "special contract", carrier-passenger agreeing higher limit.		332 SDR/passenger.		17 SDR/kg, except if passenger/consignor made special declaration of value and paid supplementary sum.			
	●loss of monetary limit of carrier's liability	same as under Warsaw Convention 1929.							
	●defence of "all necessary measures"								
	●defence of claimant's "contributory negligence"								
MAP 2 1975	●monetary limit of carrier's liability	16,600 SDR (excl. legal fees/costs), except if "special contract", carrier-passenger agreeing higher limit.		332 SDR/passenger (excl. legal fees/costs).		17 SDR/kg (excl. legal fees/costs), except if passenger/consignor made special declaration of value and paid supplementary sum.			
	●loss of monetary limit of carrier's liability	same as under Hague Protocol 1955.							
	●defence of "all necessary measures"								
	●defence of claimant's "contributory negligence"								
MAP 3 1975 (not in force).	●monetary limit of carrier's liability	100,000 SDR (excl. legal fees/costs).	4,150 SDR/passenger.	1,000 SDR/passenger (excl. legal fees/costs).			17 SDR/kg (excl. legal fees/costs), except if consignor made special declaration of value and paid supplementary sum.		
	●loss of monetary limit of carrier's liability	same as under Guatemala City Protocol 1971 (not in force).							
	●defence of "all necessary measures"								
	●defence of claimant's "contributory negligence"								

Simplified Comparative Table of Limitation of Liability and Exceptions to Liability

		Passenger		Luggage Unregistered		Luggage Registered		Cargo	
		Personal Injury/Death	Delay	Loss/Damage	Delay	Loss/Damage	Delay	Loss/Damage	Delay
MAP 4 1975	•monetary limit of carrier's liability	250,000 gold francs (excl. legal fees/costs), except if "special contract", carrier-passenger agreeing higher limit.		5,000 gold francs/passenger (excl. legal fees/costs).		250 gold francs/kg (excl. legal fees/costs), except if passenger made special declaration of value and paid supplementary sum.		17 SDR/kg (excl. legal fees/costs), except if consignor made special declaration of value and paid supplementary sum. Clarifies that limit maximum and may not be exceeded.	
	•loss of monetary limit of carrier's liability	If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".		If failure to comply with certain documentation requirements OR carrier guilty of "wilful misconduct/recklessness".		Not applicable.	
	•defence of "all necessary measures"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Not applicable.	Available to the carrier.
	•defence of claimant's "contributory negligence"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
	•special cargo defences	Not applicable.		Not applicable.		Not applicable.		Available to the carrier.	Not applicable
Montreal Convention 1999	•monetary limit of carrier's liability	No limit, and strict liability up to 100,000 SDR (excl. legal fees/costs). For damages exceeding 100,000 SDR, carrier not liable if he proves absence of negligence.	4,150 SDR (excl. legal fees/costs). Specifies that carrier may stipulate in the contract of carriage higher limit or no limit.	1,000 SDR/passenger (excl. legal fees/costs), unless special declaration of value and paid supplementary sum for registered luggage. Specifies that carrier may stipulate in the contract of carriage, higher limit or no limit.		17 SDR/kg (excl. legal fees/costs), except if consignor made special declaration of value and paid supplementary sum. Specifies that carrier may stipulate in the contract of carriage higher limit or no limit.			
	•loss of monetary limit of carrier's liability	Not applicable.	If carrier guilty of "wilful misconduct / recklessness".	If carrier guilty of "wilful misconduct/recklessness".		Not applicable.		Not applicable.	
	•defence of "all reasonably necessary measures"	Not applicable.	Available to the carrier.	Not applicable.	Available to the carrier.	Not applicable.	Available to the carrier.	Not applicable.	Available to the carrier.
	•defence of claimant's "contributory negligence"	Available to the carrier.		Available to the carrier.		Available to the carrier.		Available to the carrier.	
	•special cargo defences	Not applicable.		Not applicable; but new rule: liability only in case of fault.	Not applicable.	"Inherent vice" defence only.	Not applicable.	Available to the carrier.	Not applicable

Simplified Comparative Table of Limitation of Liability and Exceptions to Liability

		Passenger		Luggage Unregistered		Luggage Registered		Cargo	
		Personal Injury/Death	Delay	Loss/Damage	Delay	Loss/Damage	Delay	Loss/Damage	Delay
Montreal Agreement 1966 (no formal status in international law, applies to international carriage of passengers, if point of origin and destination, or agreed stopping place in the USA).	<ul style="list-style-type: none"> monetary limit of carrier's liability 	US\$ 75,000 (incl. legal fees/costs) OR US\$ 58,000 (excl. legal fees/costs), under "special contract" provision.	No provisions.						
	<ul style="list-style-type: none"> loss of monetary limit of carrier's liability 	Depends on applicable international air convention.							
	<ul style="list-style-type: none"> defence of "all necessary measures" 	Waived by the carrier.							
	<ul style="list-style-type: none"> defence of claimant's "contributory negligence" 	Available to the carrier.							
IATA Inter-carrier Agreement 1995 (no formal status in international law).	<ul style="list-style-type: none"> monetary limit of carrier's liability 	Carrier agrees to waive limits under "special contract" provision.	No provisions.						
	<ul style="list-style-type: none"> loss of monetary limit of carrier's liability 	Not applicable.							
	<ul style="list-style-type: none"> defence of "all necessary measures" 	Carrier to waive defence up to 100,000 SDR.							
	<ul style="list-style-type: none"> defence of claimant's "contributory negligence" 	Available to the carrier.							
European Council Regulation No. 2027/1997 (directly applicable to Community air carriers)	<ul style="list-style-type: none"> monetary limit of carrier's liability 	No limit.	No provisions.						
	<ul style="list-style-type: none"> loss of monetary limit of carrier's liability 	Not applicable.							
	<ul style="list-style-type: none"> defence of "all necessary measures" 	Not available for damages up to 100,000 SDR.							
	<ul style="list-style-type: none"> defence of claimant's "contributory negligence" 	Available to the carrier.							

ANNEX 2: CONSOLIDATED LIST OF CONTRACTING STATES TO THE INTERNATIONAL AIR CONVENTIONS (Status as at 1 June 2006)

Contracting States	Warsaw Convention 1929	Hague Protocol 1955	Guadalajara Convention 1961	Montreal Add. Protocol No. 1 of 1975	Montreal Add. Protocol No. 2 of 1975	Montreal Add. Protocol No. 4 of 1975	Montreal Convention 1999
Afghanistan	✓	✓					
Albania							✓
Algeria	✓	✓					
Angola	✓	✓					
Argentina	✓	✓		✓	✓	✓	
Armenia	✓						
Australia	✓	✓	✓			✓	
Austria	✓	✓	✓				✓
Azerbaijan	✓	✓	✓	✓	✓	✓	
Bahamas	✓	✓	✓				
Bahrain	✓	✓	✓	✓	✓	✓	✓
Bangladesh	✓	✓					
Barbados	✓						✓
Belarus	✓	✓	✓				
Belgium	✓	✓	✓			✓	✓
Belize							✓
Benin	✓	✓					✓
Bolivia	✓						
Bosnia and Herzegovina	✓	✓	✓	✓	✓	✓	
Botswana	✓						✓
Brazil	✓	✓	✓	✓	✓	✓	
Brunei Darussalam	✓						
Bulgaria	✓	✓					✓
Burkina Faso	✓		✓				
Cambodia	✓	✓					
Cameroon	✓	✓					✓
Canada	✓	✓	✓	✓	✓	✓	✓
Cape Verde	✓	✓	✓				✓
Chad			✓				
Chile	✓	✓		✓	✓		
China (People's Republic of)	✓	✓					✓
Colombia	✓	✓	✓	✓	✓	✓	✓
Comoros	✓						
Congo	✓	✓					
Costa Rica	✓	✓					
Côte d'Ivoire	✓	✓					
Croatia	✓	✓	✓	✓	✓	✓	
Cuba	✓	✓		✓	✓		✓
Cyprus	✓	✓	✓	✓	✓	✓	✓
Czech Republic	✓	✓	✓				✓

Please note: The information is provided for ease of reference only and is based on information available on the website of the International Civil Aviation Authority (ICAO) www.icao.org. For authoritative information on status, entry into force, as well as the text of any declarations and reservations, the secretariat of ICAO should be contacted.

Contracting States	<i>Warsaw Convention 1929</i>	<i>Hague Protocol 1955</i>	<i>Guadalajara Convention 1961</i>	<i>Montreal Add. Protocol No. 1 of 1975</i>	<i>Montreal Add. Protocol No. 2 of 1975</i>	<i>Montreal Add. Protocol No. 4 of 1975</i>	<i>Montreal Convention 1999</i>
Democratic People's Republic of Korea	✓	✓					
Democratic Republic of the Congo	✓						
Denmark	✓	✓	✓	✓	✓	✓	✓
Dominican Republic	✓	✓					
Ecuador	✓	✓				✓	
Egypt	✓	✓	✓	✓	✓	✓	✓
El Salvador		✓	✓				
Equatorial Guinea	✓						
Estonia	✓	✓	✓	✓	✓	✓	✓
Ethiopia	✓			✓	✓	✓	
Fiji	✓	✓	✓				
Finland	✓	✓	✓	✓	✓	✓	✓
France	✓	✓	✓	✓	✓		✓
Gabon	✓	✓	✓				
Gambia							✓
Germany	✓	✓	✓				✓
Ghana	✓	✓	✓	✓	✓	✓	
Greece	✓	✓	✓	✓	✓	✓	✓
Grenada		✓	✓				
Guatemala	✓	✓	✓	✓	✓	✓	
Guinea	✓	✓	✓	✓	✓	✓	
Honduras	✓			✓	✓	✓	
Hungary	✓	✓	✓			✓	✓
Iceland	✓	✓	✓			✓	✓
India	✓	✓					
Indonesia	✓						
Iran (Islamic Republic of)	✓	✓	✓				
Iraq	✓	✓	✓	✓	✓		
Ireland	✓	✓	✓	✓	✓	✓	✓
Israel	✓	✓	✓	✓	✓	✓	
Italy	✓	✓	✓	✓	✓	✓	✓
Jamaica			✓				
Japan	✓	✓				✓	✓
Jordan	✓	✓		✓	✓	✓	✓
Kazakhstan		✓					
Kenya	✓	✓		✓	✓	✓	✓
Kuwait	✓	✓	✓	✓	✓	✓	✓
Kyrgyzstan	✓	✓					
Lao People's Democratic Republic	✓	✓					
Latvia	✓	✓					✓

Contracting States	<i>Warsaw Convention 1929</i>	<i>Hague Protocol 1955</i>	<i>Guadalajara Convention 1961</i>	<i>Montreal Add. Protocol No. 1 of 1975</i>	<i>Montreal Add. Protocol No. 2 of 1975</i>	<i>Montreal Add. Protocol No. 4 of 1975</i>	<i>Montreal Convention 1999</i>
Lebanon	✓	✓	✓	✓	✓	✓	✓
Lesotho	✓	✓	✓				
Liberia	✓						
Libyan Arab Jamahiriya	✓	✓	✓				
Liechtenstein	✓	✓					
Lithuania		✓	✓				✓
Luxembourg	✓	✓	✓				✓
Madagascar	✓	✓					
Malawi	✓	✓	✓				
Malaysia	✓	✓					
Maldives	✓	✓					✓
Mali	✓	✓	✓				
Malta	✓						✓
Mauritania	✓		✓				
Mauritius	✓	✓	✓		✓		
Mexico	✓	✓	✓	✓	✓		✓
Monaco		✓					✓
Mongolia	✓						✓
Morocco	✓	✓	✓				
Myanmar	✓						
Namibia							✓
Nauru	✓	✓				✓	
Nepal	✓	✓					
Netherlands	✓	✓	✓	✓	✓	✓	✓
New Zealand	✓	✓	✓	✓	✓	✓	✓
Niger	✓	✓	✓	✓	✓	✓	
Nigeria	✓	✓	✓				✓
Norway	✓	✓	✓	✓	✓	✓	✓
Oman	✓	✓			✓	✓	
Pakistan	✓	✓	✓				
Panama	✓	✓					✓
Papaua New Guinea	✓	✓	✓				
Paraguay	✓	✓	✓				✓
Peru	✓	✓	✓	✓	✓		✓
Philippines	✓	✓	✓				
Poland	✓	✓	✓				✓
Portugal	✓	✓		✓	✓	✓	✓
Qatar	✓	✓					✓
Republic of Korea		✓					
Republic of Moldova	✓	✓	✓				

Contracting States	<i>Warsaw Convention 1929</i>	<i>Hague Protocol 1955</i>	<i>Guadalajara Convention 1961</i>	<i>Montreal Add. Protocol No. 1 of 1975</i>	<i>Montreal Add. Protocol No. 2 of 1975</i>	<i>Montreal Add. Protocol No. 4 of 1975</i>	<i>Montreal Convention 1999</i>
Romania	✓	✓	✓				✓
Russian Federation	✓	✓	✓				
Rwanda	✓	✓	✓				
Saint Vincent and the Grenadines	✓	✓					✓
Samoa	✓	✓					
Saudi Arabia	✓	✓	✓				✓
Senegal	✓	✓					
Serbia and Montenegro	✓	✓	✓	✓	✓	✓	
Seychelles	✓	✓	✓				
Sierra Leone	✓						
Singapore	✓	✓				✓	
Slovakia	✓	✓	✓				✓
Slovenia	✓	✓	✓	✓	✓	✓	✓
Solomon Islands	✓	✓	✓				
South Africa	✓	✓	✓				
Spain	✓	✓		✓	✓	✓	✓
Sri Lanka	✓	✓					
Sudan	✓	✓					
Suriname	✓	✓					
Swaziland		✓	✓				
Sweden	✓	✓	✓	✓	✓	✓	✓
Switzerland	✓	✓	✓	✓	✓	✓	✓
Syrian Arab Republic	✓	✓					✓
The former Yugoslav Republic of Macedonia	✓	✓	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓	✓	
Tonga	✓	✓					✓
Trinidad and Tobago	✓	✓					
Tunisia	✓	✓	✓	✓	✓		
Turkey	✓	✓				✓	
Turkmenistan	✓						
Uganda	✓						
Ukraine	✓	✓	✓				
United Arab Emirates	✓	✓				✓	✓
United Kingdom	✓	✓	✓	✓	✓	✓	✓
United Republic of Tanzania	✓						✓
United States of America	✓	✓				✓	✓
Uruguay	✓						
Uzbekistan	✓	✓	✓	✓	✓	✓	
Vanuatu	✓	✓					✓
Venezuela	✓	✓		✓	✓		

Contracting States	<i>Warsaw Convention 1929</i>	<i>Hague Protocol 1955</i>	<i>Guadalajara Convention 1961</i>	<i>Montreal Add. Protocol No. 1 of 1975</i>	<i>Montreal Add. Protocol No. 2 of 1975</i>	<i>Montreal Add. Protocol No. 4 of 1975</i>	<i>Montreal Convention 1999</i>
Viet Nam	✓	✓					
Yemen	✓	✓					
Zambia	✓	✓	✓				
Zimbabwe	✓	✓	✓				

Regional Economic Integration Organizations

European Community							✓
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Total Contracting States	151	136	84	48	49	53	70
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ANNEX 3: IATA AIR WAYBILL SPECIFICATIONS AND CONDITIONS OF CONTRACT

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**AIR WAYBILL SPECIFICATIONS - Reso. 600a
CONDITIONS OF CONTRACT - Reso. 600b (II)**

26th Edition

Effective 1 October 2004

International Air Transport Association

Please note:

- *The latest edition of the IATA Cargo Services Conference Resolutions Manual should be consulted before using an IATA Air Waybill (AWB). The shaded portions of the AWB have not yet been approved.*
- *Conditions of carriage are subject to change and the carrier should be consulted on the latest conditions.*



Air Waybill Specifications - Reso. 600a Conditions of Contract - Reso 600b (II)

26th Edition
Effective 1 October 2004

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PREFACE

The Resolutions and Recommended Practices included in the present volume are those under the jurisdiction of the Cargo Services Conference and its subgroups.

The grey shaded background identifies new and amended Resolutions and Recommended Practices that have not yet been declared effective at time of printing this manual. As soon as the necessary government approvals are obtained, the Senior Director, Cargo will declare them effective.

Reference Marks

The following symbols placed against an item indicate changes from the previous edition.

Symbol Meaning

- Addition of a new item
- △ Change to an item
- ⊗ Cancellation of an item
- △₁₈ changes adopted at CSC/18
- △₁₉ changes adopted at CSC/19
- △₂₃ changes adopted at CSC/23
- △₂₄ changes adopted at CSC/24
- △₂₆ changes adopted at CSC/26

RESOLUTION 600a

Attachment 'A'

AIR WAYBILL — TECHNICAL SPECIFICATIONS

1. INTRODUCTION

1.1 The air waybill is a document which shall be either an air waybill referred to as an "airline air waybill", with preprinted issuing carrier identification, or an air waybill referred to as a "neutral air waybill" without preprinted identification of the issuing carrier in any form and used by other than an air carrier.

2. MEASUREMENTS OF THE AIR WAYBILL

The outside measurements of the air waybill shall be between 208 mm (8.2 in) and 230 mm (9 in) in width and between 274 mm (10.8 in) and 305 mm (12 in) in length. The size of the boxes and their distances from the upper left hand paper edges shall be maintained exactly as shown in Appendix 'A'.

3. DESCRIPTION OF THE AIRLINE AIR WAYBILL SET

The airline air waybill set shall be printed as specified below:

3.1 the Original 3 (for Shipper) shall have the same layout, wording and shading as specified in Appendix 'B';

3.2 the Copy 4 (Delivery Receipt) shall have the same layout, wording and shading as specified in Appendix 'C';

3.3 the Original 1 (for Issuing Carrier) and Original 2 (for Consignee) shall have the same layout, wording and shading as specified in Appendix 'D';

3.4 all other copies shall have the same layout, wording and shading as specified in Appendix 'E';

△ 3.5 the airline air waybill shall be in a set of a minimum of eight copies and shall be marked in the order shown. Colour is optional and airlines shall accept both coloured and non-coloured coded air waybills.

Title	Colour
Original 3 (for Shipper)	Blue
Copy 8 (for Agent)	White
Original 1 (for Issuing Carrier)	Green
Original 2 (for Consignee)	Pink
Copy 4 (Delivery Receipt)	Yellow
Copy 5 (Extra Copy)	White
Copy 6 (Extra Copy)	White
Copy 7 (Extra Copy)	White

If using colour, copies shall be either coloured paper or white paper with appropriate colour ink imprinted thereon, as referred above;

3.6 additional copies, having the same layout, wording and shading as Appendix 'E', may be included in the airline air waybill set to a maximum of five copies. These must be printed on white paper marked "Copy XX (Extra copy for Carrier)", where XX denotes the number of the copy of the airline air waybill, and may be placed anywhere in the airline air waybill set following Original 1 (for Issuing Carrier);

3.7 notwithstanding the provisions of 3.5 and 3.6, when an air carrier uses an automated system to issue the airline air waybill:

3.7.1 the airline air waybill shall be executed in a set which includes at least the three original copies,

3.7.2 further copies of the airline air waybill may be produced by automated means at origin, en route or at destination as required,

3.7.3 upon interline transfer, at least five copies, of which one copy is entitled "Original 2 (for Consignee)" and one copy is entitled "Copy 4 (Delivery Receipt)", shall be provided to the onward carrier,

△¹⁹

3.7.3 upon interline transfer,

3.7.3.1 when the exchange of a shipment record is not possible, at least five copies, of which one copy is entitled "Original 2 (for Consignee)" and one copy is entitled "Copy 4 (Delivery Receipt)", shall be provided to the onward carrier,

3.7.3.2 when the exchange of a shipment record is possible, it is not required that copies of an air waybill be provided to the onward carrier. However the carriers involved must agree to adhere to the provisions of Resolution 600f,

4. DESCRIPTION OF THE NEUTRAL AIR WAYBILL SET

The neutral air waybill set shall be printed as specified below:

4.1 the Original 3 (for Shipper) shall have the same layout, wording and shading as specified in Appendix 'B';

4.2 the Copy 4 (Delivery Receipt) shall have the same layout, wording and shading as specified in Appendix 'C';

4.3 the Original 1 (for Issuing Carrier) and Original 2 (for Consignee) shall have the same layout, wording and shading as specified in Appendix 'D';

4.4 all other copies shall have the same layout, wording and shading as specified in Appendix 'E';

△ 4.5 the neutral air waybill shall be either in a set of a minimum of eight copies in the order and marked as shown in 4.5.1; or in two sets of a minimum of four copies each in the order and marked as shown in 4.5.2. Colour is optional and airlines shall accept both coloured and non-coloured coded air waybills. If using colour, copies shall be either coloured paper or white paper with appropriate colour ink imprinted thereon, as referred to below;

4.5.1 one set of eight copies:

Title	Colour
Original 3 (for Shipper)	Blue
Copy 8 (for Agent)	White
Original 1 (for Issuing Carrier)	Green
Original 2 (for Consignee)	Pink
Copy 4 (Delivery Receipt)	Yellow
Copy 5 (Extra Copy)	White
Copy 6 (Extra Copy)	White
Copy 7 (Extra Copy)	White

4.5.2 two sets of four copies each:

First set

Title	Colour
Original 3 (for Shipper)	Blue
Copy 8 (for Agent)	White
Original 1 (for Issuing Carrier)	Green
Copy 7 (Extra Copy)	White

Second set

Title	Colour
Original 2 (for Consignee)	Pink
Copy 4 (Delivery Receipt)	Yellow
Copy 5 (Extra Copy)	White
Copy 6 (Extra Copy)	White

△ **4.6** paper and carbon, where used, shall be of such quality that all copies are clearly legible;

4.7 fastening or stub shall:

4.7.1 hold the neutral air waybill set together so that it does not disintegrate into loose sheets of paper during normal handling, and

4.7.2 be precut and of such nature that copies can be pulled easily and that when a part is pulled, the page does not tear apart.

5. DESCRIPTION OF THE FACE OF THE AIRLINE AIR WAYBILL

5.1 In addition to the information as illustrated in Appendices 'B' – 'E':

5.1.1 the air waybill number shall be placed in the upper left corner, in the upper right corner and in the lower right corner of all copies of the airline air waybill as shown in Appendix 'A';

5.1.2 the air waybill number shall consist of the issuing carrier's three-digit IATA airline code number and a serial number of eight digits including a check digit placed in the extreme right hand position;

5.1.3 the check digit shall be determined by using the unweighted Modulus 7 system;

5.1.4 the serial number shall be of the same size, similar style of type (font) and of the same boldness as the airline code number;

5.1.5 a separating hyphen placed between the airline code number and the serial number shall be used for the number shown in the upper right corner and in the lower right corner;

5.1.6 in the Shipper's Certification box, the part of the statement referring to the Dangerous Goods Regulations from the word "insofar ..." shall be printed in bold type.

5.2 In addition to the information illustrated in Appendices 'B' – 'E', the following features may also be shown at carrier's option:

5.2.1 a space may be inserted in the serial number of the airline air waybill between the fourth and fifth digits;

5.2.2 carrier's insignia may be printed in the issuing carrier's name and address box;

5.2.3 the notice containing reference to the carrier's Conditions of Contract may be printed on all copies which are not originals except Copy 4 (Delivery Receipt);

5.2.4 the space in the box below the reference to the carrier's Conditions of Contract, may be used to print other related statements as may be necessary to conform to national requirements;

5.2.5 "Requested Flight/Date" box may be without title;

5.2.6 the words "Also Notify" may be printed after the title of the "Accounting Information" box (applicable for domestic transportation only);

5.2.7 the "Amount of Insurance" box and adjacent "Insurance" clause box may be shaded and without title or printing of clause;

5.2.8 a box titled "TC" (for Transaction Correction), the size of which is limited to two characters and located to the right of the "Insurance" clause box, may be provided;

5.2.9 "Handling Information" box may include the printing of not more than five subtitles. A box titled "SCI" (for Special Customs Information), with dimensions of 8 mm × 30 mm (0.3149 in × 1.1811 in), is to be inserted in the bottom right corner of this box (insertion of this box is mandatory);

5.2.10 when the air waybill is issued in the United States, the statement "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to USA law prohibited" may be printed in the "Handling Information" box;

5.2.11 the description of the charges/fees frequently incurred may be printed in the first two lines of the "Other Charges" box;

5.2.12 "Tax" boxes may be shaded and without title;

5.2.13 any special services provided may be printed in the shaded boxes below the "Total Other Charges Due Carrier" boxes;

5.2.14 language(s) or an annotation may be printed at the bottom of the air waybill indicating that the wording of the form is available in another language and where it may be obtained;

△ **5.2.15** bar coded air waybill numbers, if used, shall be printed in accordance with Recommended Practice 1600t and shall be shown in at least one of the locations illustrated in Appendix 'F'. **Note:** For air waybills produced on U.S. Letter Size paper, the lower right corner cannot apply due to space limitation;

5.2.16 the three “Optional Shipping Information” boxes may be shaded and without title. Insertion of these boxes is mandatory;

5.2.17 nothing additional may be printed and/or overprinted on the airline air waybill.

6. DESCRIPTION OF THE FACE OF THE NEUTRAL AIR WAYBILL

6.1 In addition to the information as illustrated in Appendices ‘B’ – ‘E’:

6.1.1 in the Shipper’s Certification box, the part of the statement referring to the Dangerous Goods Regulations from the word “insofar ...” shall be printed in bold type;

6.1.2 the printer’s reference shall be printed in the lower left corner of all copies of the neutral air waybill in the following sequence:

6.1.2.1 printer’s name,

6.1.2.2 production reference number,

6.1.2.3 production date;

6.1.3 the content of the following neutral air waybill boxes may be printed:

6.1.3.1 issuing carrier’s agent, name and city box with the issuing carrier’s agent’s name and city,

6.1.3.2 agent’s IATA code box with the agent’s IATA code number,

6.1.3.3 signature of shipper or his agent box with the agent’s name.

6.2 Nothing additional may be printed and/or overprinted on the neutral air waybill.

7. DESCRIPTION OF THE REVERSE SIDE OF THE AIRLINE AND NEUTRAL AIR WAYBILL

△ **7.1** The currently effective IATA Conditions of Contract shall be printed on three original copies of airline and neutral air waybills as a minimum requirement. They may also be printed on other copies of the air waybill.

△₂₆ **7.1** The currently effective IATA Conditions of Contract shall be printed on a minimum of the three original copies of the airline and neutral air waybill.

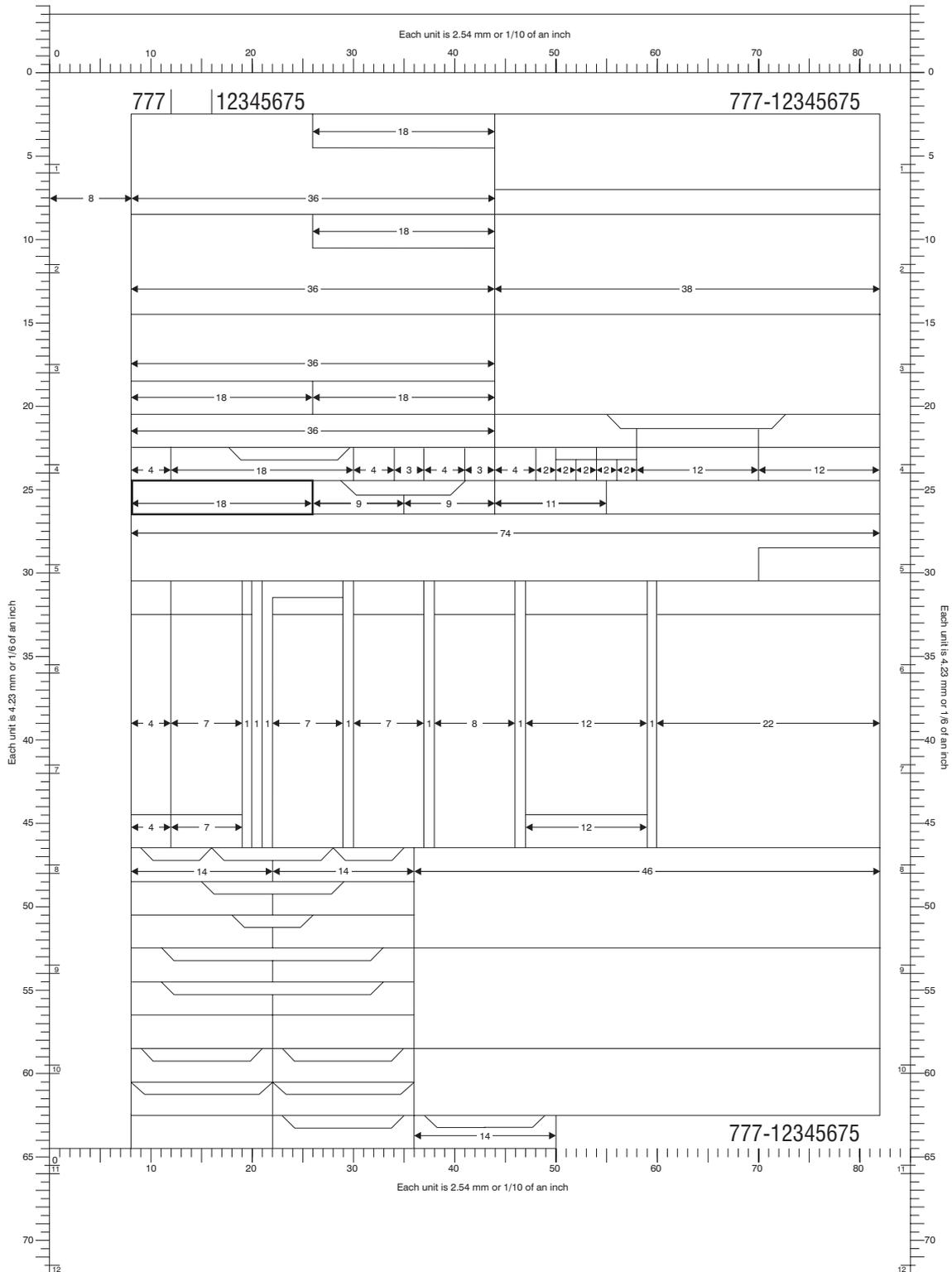
7.2 Domestic Conditions of Contract, separate from the currently effective IATA Conditions of Contract, may additionally be printed on the airline air waybill at carrier’s option.



RESOLUTION 600a

Attachment 'A'

Appendix 'A'





RESOLUTION 600a
Attachment 'A'
Appendix 'B'

Shipper's Name and Address		Shipper's Account Number		Not Negotiable			
				Air Waybill			
				Issued by			
				Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.			
Consignee's Name and Address		Consignee's Account Number		It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.			
Issuing Carrier's Agent Name and City		Accounting Information					
Agent's IATA Code		Account No.					
Airport of Departure (Addr. of First Carrier) and Requested Routing				Reference Number			
				Optional Shipping Information			
To	By First Carrier	Routing and Destination	to	by	to		
Airport of Destination		Requested Flight/Date		Currency	Declared Value for Carriage		
				CHGS Code	Declared Value for Customs		
				WT/VAL PPD			
				Other PPD			
				COLL			
				Amount of Insurance	INSURANCE - If carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figures in box marked "Amount of Insurance".		
Handling Information							
SCI							
No. of Pieces RCP	Gross Weight	kg lb	Rate Class Commodity Item No.	Chargeable Weight	Rate / Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
Prepaid		Weight Charge		Collect		Other Charges	
		Valuation Charge					
		Tax					
		Total Other Charges Due Agent					
		Total Other Charges Due Carrier					
		Total Prepaid		Total Collect		Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.	
Currency Conversion Rates		CC Charges in Dest. Currency		Executed on (date)		at (place) Signature of Issuing Carrier or its Agent	
For Carrier's Use only at Destination		Charges at Destination		Total Collect Charges			

ORIGINAL 3 (FOR SHIPPER)



RESOLUTION 600a
Attachment 'A'
Appendix 'C'

Shipper's Name and Address		Shipper's Account Number		Not Negotiable			
				Air Waybill			
				Issued by			
				Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.			
Consignee's Name and Address		Consignee's Account Number		Received in Good Order and Condition			
				at (place) on (date/time)			
				Signature of Consignee or his Agent			
Issuing Carrier's Agent Name and City				Accounting Information			
Agent's IATA Code		Account No.					
Airport of Departure (Addr. of First Carrier) and Requested Routing				Reference Number			
				Optional Shipping Information			
To	By First Carrier	Routing and Destination	to	by	to		
Airport of Destination		Requested Flight/Date		Amount of Insurance			
				INSURANCE – If carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figures in box marked "Amount of Insurance".			
Handling Information							
					SCI		
No. of Pieces RCP	Gross Weight	kg lb	Rate Class Commodity Item No.	Chargeable Weight	Rate / Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
Prepaid		Weight Charge		Collect		Other Charges	
		Valuation Charge					
		Tax					
		Total Other Charges Due Agent					
		Total Other Charges Due Carrier					
						Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.	
						Signature of Shipper or his Agent	
Total Prepaid		Total Collect					
Currency Conversion Rates		CC Charges in Dest. Currency					
				Executed on (date) at (place)		Signature of Issuing Carrier or its Agent	
For Carrier's Use only at Destination		Charges at Destination		Total Collect Charges			

COPY 4 (DELIVERY RECEIPT)



RESOLUTION 600a
Attachment 'A'
Appendix 'D'

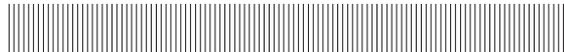
Shipper's Name and Address		Shipper's Account Number		Not Negotiable			
				Air Waybill			
				Issued by			
				Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.			
Consignee's Name and Address		Consignee's Account Number		It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.			
Issuing Carrier's Agent Name and City				Accounting Information			
Agent's IATA Code		Account No.					
Airport of Departure (Addr. of First Carrier) and Requested Routing				Reference Number			
				Optional Shipping Information			
To	By First Carrier	Routing and Destination	to	by	to		
Airport of Destination		Requested Flight/Date		Currency	Declared Value for Carriage		
				WT/VAL Code PPD COLL	Declared Value for Customs		
				Other PPD COLL			
				Amount of Insurance	INSURANCE - If carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figures in box marked "Amount of Insurance".		
Handling Information							
SCI							
No. of Pieces RCP	Gross Weight	kg lb	Rate Class Commodity Item No.	Chargeable Weight	Rate Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
Prepaid		Weight Charge		Collect		Other Charges	
		Valuation Charge					
		Tax					
		Total Other Charges Due Agent				Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.	
		Total Other Charges Due Carrier					
						Signature of Shipper or his Agent	
Total Prepaid		Total Collect					
Currency Conversion Rates		CC Charges in Dest. Currency					
For Carrier's Use only at Destination		Charges at Destination		Executed on (date)		at (place) Signature of Issuing Carrier or its Agent	
				Total Collect Charges			



RESOLUTION 600a
Attachment 'A'
Appendix 'F/1'

Shipper's Name and Address	Shipper's Account Number	 Not Negotiable Air Waybill Issued by Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.
Consignee's Name and Address	Consignee's Account Number	It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
Issuing Carrier's Agent Name and City		Accounting Information

Shipper's Name and Address	Shipper's Account Number	Not Negotiable Air Waybill Issued by  Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.
Consignee's Name and Address	Consignee's Account Number	It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
Issuing Carrier's Agent Name and City		Accounting Information



Shipper's Name and Address	Shipper's Account Number	Not Negotiable Air Waybill Issued by Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.
Consignee's Name and Address	Consignee's Account Number	It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
Issuing Carrier's Agent Name and City		Accounting Information



RESOLUTION 600a Attachment 'A'

△ Appendix 'F'

Shipper's Name and Address		Shipper's Account Number		 Not Negotiable Air Waybill Issued by Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity.			
Consignee's Name and Address		Consignee's Account Number					
Issuing Carrier's Agent Name and City				Accounting Information			
Agent's IATA Code		Account No.					
Airport of Departure (Addr. of First Carrier) and Requested Routing				Reference Number		Optional Shipping Information	
To	By First Carrier	Routing and Destination	to	by	to	by	
Airport of Destination		Requested Flight/Date		Amount of Insurance		INSURANCE - If carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figures in box marked "Amount of Insurance".	
Handling Information							SCI
No. of Pieces RCP	Gross Weight	kg lb	Rate Class Commodity Item No.	Chargeable Weight	Rate Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
Prepaid		Weight Charge		Collect		Other Charges	
		Valuation Charge					
		Tax					
		Total Other Charges Due Agent					
		Total Other Charges Due Carrier					
		Total Prepaid		Total Collect			
Currency Conversion Rates		CC Charges in Dest. Currency					
For Carrier's Use only at Destination		Charges at Destination		Total Collect Charges			

ORIGINAL 3 (FOR SHIPPER)

RESOLUTION 600b (II)*

AIR WAYBILL — CONDITIONS OF CONTRACT

CSC(16)600b (II)	Expiry: Indefinite Type: B
CSC(26)600b (II)	Expiry: Indefinite Type: B

RESOLVED that:

1. The Conditions of Contract, prefaced by a Notice, on the reverse side of the air waybill/consignment note, read as follows:

NOTICE CONCERNING CARRIERS' LIMITATION OF LIABILITY

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 the Convention governs and in most cases limits the liability of the carrier in respect of loss, damage, or delay to cargo to 250 French gold francs per kilogram, unless a higher value is declared in advance by the shipper and a supplementary charge paid if required.

△₂₆

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention or the Montreal Convention may be applicable, and may limit the liability of the carrier in respect of loss, damage, or delay to cargo to 250 French gold francs per kilogram or 17 Special Drawing Rights (SDRs), unless a higher value is declared in advance by the shipper and a supplementary charge paid if required.

The liability limit of 250 French gold francs per kilogram is approximately USD 20.00 per kilogram on the basis of USD 42.22 per ounce of gold.

△₂₆

250 French gold francs is equal to approximately 17 SDR.

CONDITIONS OF CONTRACT

1. As used in this contract "carrier" means all air carriers that carry or undertake to carry the goods hereunder or perform any other services incidental to such air carriage, "Warsaw Convention" means the Convention for the Unification of certain Rules relating to International Carriage by Air, signed at Warsaw, 12 October 1929, or that Convention as amended at The Hague, 28 September 1955, which ever may be applicable, and "French gold francs" means francs consisting of **65½ milligrams of gold with a fineness of nine hundred thousandths.**

* This Resolution is in the hands of all IATA Cargo Agents.

2./2.1 Carriage hereunder is subject to the rules relating to liability established by the Warsaw Convention unless such carriage is not “international carriage” as defined by that Convention.

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1. As used in this contract: “carrier” means all air carriers that carry or undertake to carry the goods hereunder or perform any other services incidental to such air carriage; “Warsaw Convention” means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, 12 October 1929, or that Convention as amended at The Hague, 28 September 1955, or by Montreal Protocol No. 4 of 1975, whichever may be applicable; “French gold francs” means francs consisting of **65½ milligrams of gold with a fineness of nine hundred thousandths**; “Montreal Convention” means the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal, on 28 May 1999; and “SDR” means a Special Drawing Right as defined by the International Monetary Fund.

2./2.1 Carriage hereunder is subject to the rules relating to liability established by the Warsaw Convention or Montreal Convention unless such carriage is not “international carriage” as defined by the applicable Convention.

2.2 To the extent not in conflict with the foregoing, carriage hereunder and other services performed by each carrier are subject to:

2.2.1 applicable laws (including national laws implementing the Convention), government regulations, orders and requirements;

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2.2.1 applicable laws (including national laws implementing the Warsaw Convention or the Montreal Convention), government regulations, orders and requirements;

2.2.2 provisions herein set forth, and

2.2.3 applicable tariffs, rules, conditions of carriage, regulations and timetables (but not the times of departure and arrival therein) of such carrier, which are made part hereof and which may be inspected at any of its offices and at airports from which it operates regular services. In transportation between a place in the United States or Canada and any place outside thereof the applicable tariffs are the tariffs in force in those countries.

3. The first carrier’s name may be abbreviated on the face hereof, the full name and its abbreviation being set forth in such carrier’s tariffs, conditions of carriage, regulations and timetables. The first carrier’s address is the airport of departure shown on the face hereof. The agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face hereof or shown in carrier’s timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

4. Except as otherwise provided in carrier’s tariffs or conditions of carriage, in carriage to which the Warsaw Convention does not apply carriers’ liability shall not exceed USD 20.00 or the equivalent per kilogram of goods lost, damaged or delayed, unless a higher value is declared by the shipper and a supplementary charge paid.

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4. For carriage to which neither the Warsaw Convention nor the Montreal Convention apply carrier’s liability shall not exceed the per kilogram monetary limit set out in carrier’s tariffs or conditions of carriage for goods lost, damaged or delayed, unless a higher value is declared by the shipper and a supplementary charge paid.

5. If the sum entered on the face of the air waybill as “Declared Value for Carriage” represents an amount in excess of the applicable limits of liability referred to in the above Notice and in these Conditions and if the shipper has paid any supplementary charge that may be required by the carrier’s tariffs, conditions of carriage or regulations, this shall constitute a special declaration of value and in this case carrier’s limit of liability shall be the sum so declared. Payment of claims shall be subject to proof of actual damages suffered.

6. In cases of loss, damage or delay of part of the consignment, the weight to be taken into account in determining carrier’s limit of liability shall be only the weight of the package or packages concerned.

7. Any exclusion or limitation of liability applicable to carrier shall apply to and be for the benefit of carrier’s agents, servants and representatives and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives. For purpose of this provision carrier acts herein as agent for all such persons.

8./8.1 Carrier undertakes to complete the carriage hereunder with reasonable dispatch. Carrier may use alternate carriers or aircraft and may without notice and with due regard to the interests of the shipper use other means of transportation. Carrier is authorised by shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof. This sub-paragraph is not applicable to/from USA.

8.2 Carrier undertakes to complete the carriage hereunder with reasonable dispatch. Except within USA where carrier tariffs will apply, carrier may use alternate carriers or aircraft and may without notice and with due regard to the interests of the shipper use other means of transportation. Carrier is authorised by shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof. This sub-paragraph is applicable only to/from USA.

9. Subject to the conditions herein, the carrier shall be liable for the goods during the period they are in its charge or the charge of its agent.

10./10.1 Except when the carrier has extended credit to the consignee without the written consent of

the shipper, the shipper guarantees payment of all charges for carriage due in accordance with carrier's tariffs, conditions of carriage and related regulations, applicable laws (including national laws implementing the Convention), government regulations, orders and requirements.

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10./10.1 Except when the carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for carriage due in accordance with carrier's tariffs, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention or the Montreal Convention), government regulations, orders and requirements.

10.2 When no part of the consignment is delivered, a claim with respect to such consignment will be entertained even though transportation charges thereon are unpaid.

11. Notice of arrival of goods will be given promptly to the consignee or to the person indicated on the face hereof as the person to be notified. On arrival of the goods at the place of destination, subject to the acceptance of other instructions from the shipper prior to arrival of the goods at the place of destination, delivery will be made to, or in accordance with the instructions of the consignee. If the consignee declines to accept the goods or cannot be communicated with, disposition will be in accordance with instructions of the shipper.

12./12.1 The person entitled to delivery must make a complaint to the carrier in writing in the case:

12.1.1 of visible damage to the goods, immediately after discovery of the damage and at the latest within fourteen (14) days from receipt of the goods;

12.1.2 of other damage to the goods, within fourteen (14) days from the date of receipt of the goods;

12.1.3 of delay, within twenty-one (21) days of the date the goods are placed at his disposal; and

12.1.4 of non-delivery of the goods, within one hundred and twenty (120) days from the date of the issue of the air waybill.

12.2 For the purpose of 12.1 complaint in writing may be made to the carrier whose air waybill was used, or to the first carrier or to the last carrier or to the carrier who performed the transportation during which the loss, damage or delay took place.

12.3 Any rights to damages against carrier shall be extinguished unless an action is brought within two years 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 transportation stopped.

13. The shipper shall comply with all applicable laws and government regulations of any country to, from, through or over which the goods may be carried, including those relating to the packing, carriage or delivery of the goods, and shall furnish such information and attach such documents to this air waybill as may be necessary to comply with such laws and

regulations. Carrier is not liable to the shipper for loss or expense due to the shipper's failure to comply with this provision.

14. No agent, servant or representative of carrier has authority to alter, modify or waive any provisions of this contract.

15. If carrier offers insurance and such insurance is requested, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by this air waybill are insured under an open policy for the amount requested as set out on the face hereof (recovery being limited to the actual value of goods lost or damaged provided that such amount does not exceed the insured value). The insurance is subject to the terms, conditions and coverage (from which certain risks are excluded) of the open policy, which is available for inspection at an office of the issuing carrier by the interested party. Claims under such policy must be reported immediately to an office of carrier.