

**DRAFT PROTOCOL TO AMEND THE WARSAW CONVENTION
(1929) — INTERNATIONAL CARRIAGE BY AIR**

The Diplomatic Conference, held under the auspices of the International Civil Aviation Organization, at The Hague, between September 6th and 27th, 1955, met for the purpose of amending the above Convention. Deliberations of the Conference resulted in a Protocol.

At the present time, the Warsaw Convention, which is probably the most widely implemented international agreement in any subject relating to private law, has been ratified or adhered to by forty-five States, including the recent adherences of Egypt, Venezuela and South Africa.

The Protocol will take effect when it has been ratified by 30 States, parties to the Convention at that time.

Briefly, the principal amendments are as follows:—

Article 3 has been so amended by the Protocol that more simplified details are required on the passenger ticket. Acceptance by the carrier of a passenger without a ticket having been issued to him, or a ticket which does not include the necessary statement, involves unlimited liability on the part of the carrier. The carrier, however, does not lose all defenses; he is only exposed to unlimited liability under *Article 22* of the Convention.

Article 4, as amended by the Protocol, has simplified the details required on the Baggage Check. The above comment under *Article 3* is appropriate.

Articles 8 and 9 regulate the conditions applicable to the Air Waybill (i.e. the equivalent to the Bill of Lading in Maritime Law parlance). As amended by the Protocol, the necessary particulars contained therein are very considerably reduced and, an important point, the Air Waybill now need not be issued until after the cargo is on board; in fact, the penalty for non-issuance only takes effect after that occurrence.

Article 15 is now amended by the addition of a short paragraph reading:—
“Nothing in this Convention prevents the issue of a negotiable air waybill.”
This helps to clarify what is generally believed to be the meaning of the Convention in this respect.

Article 20 (as amended) now deletes the former paragraph (2) and removes a defense from the carrier for “negligent pilotage or negligence in the handling of the aircraft or in navigation”.

Article 23 (as amended) enables the Carrier, by the addition of a paragraph, to enter into a special arrangement for the carriage of livestock or perishable goods (as is the case under carriage by sea).

Article 25 (as amended) reads as follows: “The limits of liability specified in *Article 22* of this Convention shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or

omission of a servant or agent, it is also proved that he was acting within the scope of his employment." That is, the Plaintiff must now prove concurrently: 1) "that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly"; and 2) "with knowledge that damage would probably result". (Article 25 of the Convention has so far produced a good deal of litigation owing to the unfortunate translation of "dol" into "wilful misconduct").

Article 25A is a new article extending the benefit of unlimited liability to servants and agents of the carrier. At present it might be possible for a plaintiff to join the pilot, or deceased pilot, as Defendant, in order to obtain a higher amount than that provided by the Convention; the carrier, owing to a contract of service, might have to stand the indemnity of such a Court judgment.

Article 34 (as amended) provides that the carrier does not require to issue traffic documents (as detailed in Articles 3 to 9 inclusive) for services which are out of the normal run of business.

In addition to the above, the situation has now been clarified as to the applicability of the Convention between members of the British Commonwealth.

Questions such as delay and charter, which appear to have been discussed in part, are not included in the Convention. It may be felt that the latter subject, for example, requires a separate convention.

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