No. 7305

AUSTRALIA, BELGIUM, BRAZIL, BYELORUSSIAN SOVIET SOCIALIST REPUBLIC, REPUBLIC OF CHINA, etc.

Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier. Signed at Guadalajara, on 18 September 1961

Official texts: English, French and Spanish.

Registered by Mexico on 15 June 1964.

AUSTRALIE, BELGIQUE, BRÉSIL, RÉPUBLIQUE SOCIALISTE SOVIÉTIQUE DE BIÉLORUSSIE, RÉPUBLIQUE DE CHINE, etc.

Convention, complémentaire à la Convention de Varsovie, pour l’unification de certaines règles relatives au transport aérien international effectué par une personne autre que le transporteur contractuel. Signée à Guadalajara, le 18 septembre 1961

Textes officiels anglais, espagnol et français.

Enregistrée par le Mexique le 15 juin 1964.
No. 7305. CONVENTION,¹ SUPPLEMENTARY TO THE WARSAW CONVENTION,² FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER. SIGNED AT GUADALAJARA, ON 18 SEPTEMBER 1961

The States signatory to the present Convention
Noting that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage
Considering that it is therefore desirable to formulate rules to apply in such circumstances
Have agreed as follows:

Article 1

In this Convention:

a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph b) is governed by the one or by the other;

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

¹ In accordance with article XIII (1), the Convention came into force on 1 May 1964, the ninetieth day after the date of deposit of the fifth instrument of ratification, in respect of the following States which deposited their instruments of ratification with the Government of Mexico on the dates indicated:

- Mexico .................................................. 16 May 1962
- United Kingdom of Great Britain and Northern Ireland ......................... 4 September 1962
- Ireland .......................................................... 1 November 1962
- Australia .................................................. 24 January 1964
- France ......................................................... 1 February 1964
- Switzerland .................................................

Subsequently, the Convention entered into force in respect of the Netherlands and the Federal Republic of Germany on 25 and 31 May 1964, respectively, the said States having deposited their instruments of ratification on 25 February and 2 March 1964 respectively.


c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph 2 but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph 2, is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

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

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

Article IV

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

Article V

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

Article VI

In relation to the carriage performed by the actual carrier, the aggregate
of the amounts recoverable from that carrier and the contracting carrier, and
from their servants and agents acting within the scope of their employment,
shall not exceed the highest amount which could be awarded against either the
contracting carrier or the actual carrier under this Convention, but none of the
persons mentioned shall be liable for a sum in excess of the limit applicable
to him.

Article VII

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

Article VIII

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

Article IX

1. Any contractual provision tending to relieve the contracting carrier or the
actual carrier of liability under this Convention or to fix a lower limit than
that which is applicable according to this Convention shall be null and void,
but the nullity of any such provision does not involve the nullity of the whole
agreement, which shall remain subject to the provisions of this Convention.
2. In respect of the carriage performed by the actual carrier, the preceding
paragraph shall not apply to contractual provisions governing loss or damage
resulting from the inherent defect, quality or vice of the cargo carried.
3. Any clause contained in an agreement for carriage and all special agreements
entered into before the damage occurred by which the parties purport to infringe
the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

Article X

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

Article XI

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

Article XII

1. This Convention shall be subject to ratification by the signatory States.
2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

Article XIII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organization by the Government of the United States of Mexico.

Article XIV

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.
Article XV

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

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

Article XVI

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

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

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

Article XVII

No reservation may be made to this Convention.

Article XVIII

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organization and to all States Members of the United Nations or of any of the Specialized Agencies:

a) of any signature of this Convention and the date thereof;

b) of the deposit of any instrument of ratification or accession and the date thereof;

c) of the date on which this Convention comes into force in accordance with Article XIII, paragraph 1;

d) of the receipt of any notification of denunciation and the date thereof;

e) of the receipt of any declaration or notification made under Article XVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

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

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

[The Convention was signed on behalf of the Governments of Australia, Belgium, Brazil, the Byelorussian SSR, the Republic of China, Cuba, Czechoslovakia, France, the Federal Republic of Germany, Guatemala, the Holy See, Honduras, Hungary, Indonesia, Mexico, the Netherlands, Norway, the Philippines, Poland, Sweden, Switzerland, the Ukrainian SSR, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and Venezuela.]