NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)

MASTER'S THESIS

The Liability of Air Carrier for Damages Caused to Passengers

(Analytical study within the framework of international and national law)

Zeravan Hussein Hasan

NICOSIA

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Thesis Defence

THE LIABILITY OF AIR CARRIER FOR DAMAGES CAUSED TO PASSENGERS

(ANALYTICAL STUDY WITHIN THE FRAMEWORK OF INTERNATIONAL AND NATIONAL LAW)

We certify the thesis is satisfactory for the award of degree of Master of Laws in International Law

Prepared By

Zeravan Hussein Hasan

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I Zeravan Hussein Hasan..., hereby declare that this dissertation entitled "The Liability of Air Carrier for Damages Caused To Passengers" has been prepared myself under the guidance and supervison of "Asst.Prof.Dr.Resat Volkan." in partial fulfilment of The Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach any Law of Copyrights and has been tested for plagarism and a copy of the result can be found in the Thesis.

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Abstract

Air carriage is one of the carriage images known along with land and sea carriage, where the air carriage is a mean of carrying passengers and goods by air. We have looked in the folds of this study the essence of air carriage, through referring to the definition and showing the characteristics of this contract, where it showed that the resulting contract is a consensual contract on one hand, and as a commercial contract on the other hand, it is at the same time compliance contract without affecting the nature of consensual contract. We also discussed the air carrier's obligations in a contract of carrying people and things. It should be noted that the international conventions related to air carriage have been built based on the air carrier, such as the Warsaw convention of 1929, other international conventions and parties to the lawsuit in the contract of air carriage which is both the plaintiff and the defendant, these conventions showed competent court to consider them. On the other hand, it shows us that there is a range of situations if it is achieved the responsibility of the air carrier is implemented, such as the responsibility for the delay as well as implementing in the case of fault of the carrier, and show us that there is a group of cases lead to Drop the responsibility for air carrier which is the case if the damage is caused by the negligence or fault of the carrier. It should be noted that in case of achieving the responsibility of the air carrier as a result the responsibility should be given and also the impact of that which is compensation.

ÖZ

Hava nakliyesi, karayolu ile deniz taşımacılığı yanı sıra bilinen nakliyat metotlarından biridir. Hava nakliyatı, hava yolu ile yolcu ve yük aktarma vasıtası sayılmaktadır. Bu araştırmada, havayolu taşımacılığı mahiyeti üzerine durularak bu tür akdin tanımı ve özelliklerine işaret edilmektedir. Buna göre üzerine tahakkuk edilen sözleşme rıza ile yapılan sözleşme niteliğini taşıyan sözleşme olmakla beraber, aynı zamanda ticaret niteliğini taşıyan sözleşmedir ve rıza niteliğini etkilemeden uyma niteliğini taşımaktadır. Ayrıca, yolcu ve eşya nakli sözleşmesinde belirtilen havayolu nakliyecisi yükümlükleri hakkında detay verilmiştir. 1929 yılında imza edilen Varşova anlaşması gibi Havayolu nakliyesiyle ilişkin uluslararası anlaşmalarda davacı davalı olarak taraf olduğu havayolu taşıma sözleşmesinde havayolu taşımacı sorumluluğuna işaret edilip bu anlaşmalar ihtisaslı mahkeme tayin edilmiştir. Öte yandan, hava yolu taşımacının gecikme ve hata durumu gibi birtakım durumların ortaya çıkması belli olmaktadır. Bunun neticesi olarak bazı durumlarda havayolu nakliyecinin sorumluluğu bazı durumlarda düşer, bu durum, nakliyecinin hata veya ihmal etmesi ihtimalleri gibidir. Şurasını belirtmek lazım gelir ki havayolu taşımacının sorumluluğu ispat edildiği durumda neticesi olarak tazminat doğar.

Dedication

"I don't know what your destiny will be, but one thing I know; the only ones among you who will be really happy are those who have sought and have found how to serve."

Albert Schweitzer

I dedicate this thesis to my beloved father

To the loving memory of my mother

To my lovely wife

You have successfully made me the person I am becoming

You will always be remembered

This is also dedicated to my family and the many friends who supported me on this journey.

For those who helped with no expectation of personal gain.

This work is dedicated to those who protect and serve my country.

Acknowledgement

Foremost, I'm highly grateful to God for His blessing that continue to flow into my life, and because of Him, I made this through against all odds.

With a great pleasure I would like to acknowledge the support, assistances and contribution made by individuals from the begining of the fieldwork, providing me access, data and information, to the writing process until the completion of this thesis.

I would like to express my deepest gratitude to my supervisor Associate Professor **Dr. Volkan Resat Gunel** for his unwavering support, collegiality, and mentorship throughout this thesis.

I have to thank my parents for their love and support throughout my life. Thank you both for giving me strength to reach for the stars and chase my dreams. My wife who took care well of our kids during my absence and bore my travelling.

My whole family and friends deserve my wholehearted thanks as well.

TABLE OF CONTENTS

Abbreviations

Acronyms	Definition
AC	Air Carrier
ACg	Air Carriage
ACL	Air Carrier's Liability
ACLDCPs	Air Carrier's Liability for Damages Caused to Passengers
AL	Air Law
CA	Civil Aviation
ACgC	Air Carriage Contract
CsC	Consensual Contract
CoCs	Compliance Contracts
CmC	Commercial Contract
NL	National Legislation
InL	International Legislation
CP	Carrying Persons
CG	Carrying Goods
InC	International Conventions
WaC	Warsaw Convention
MC	Montréal Convention

The definitions of terms

Air Law:

It is a set of legal rules and principles that governing the aviation regarding carrying people, passengers, baggage and goods.

Air Carriage Operations:

Means that the airline (an international **AC**) carry people, goods and commodities by aircraft on its flights from a place to another in exchange for a fee.

Aircraft:

It is a machine can derive survival in the atmosphere from reactions of the air which reflected from the surface of the earth, including all aerial vehicles, such as blimps, balloons, gliders and airplanes equipped with mobile and fixed wings.

Air Carrier:

Is every natural or legal person displays or runs airlines to carry passengers or mail or goods.

Plane Crash:

Each incident which linked to run the plane, it is between the time in which a person boarded the aircraft to fly until the time of departure of all the people from the plane.

The Pilot:

The pilot is responsible for the operation and leadership of the plane and its safety in flight time.

The Airport:

The specific area on the surface of the ground or water, including buildings, plant and equipment intended for the use of takeoff, landing and the movements of the aircraft totally or partially.

Introduction

The Liability of Air Carrier for Damages Caused to Passengers

(Analytical study within the framework of international and national law)

Air carriage is the fastest mean to link between nations and continents so that it contributed to flourish trade and cultural convergence between peoples at a time when the world is measured by the development of **ACg** and the regular spread airlines network, to cover all spot in the land at a time the Speed became its prominent feature. Despite these privileges, this mean is risky which prompted the international community and the internal communities to build special rules that organize the movement and usage of the aircraft by setting rules to ensure the safety of what the aircraft includes. Thus, the countries have resorted to enact **NL** and conclude **InCs** designed to regulate the air navigation and airspace regulation to ensure the safety of passengers for the damages could cause them. Moreover, at the heart of this thesis we seek to shed light on all **InCs** as well as some **NL** in order to specify **ACLDCPs**.

- **The Importance of the Research Topic: -**

The subject of research has especially importance, this importance stems from being a form of navigation called air navigation, which is considered as the most important and fastest carriage images in the modern era. What increases its importance is, there are many problems that mired and the most important one is a mechanism of compensation and the situations, which prove liability of the carrier, and other problems that we have mentioned in their own box (dilemmas box).

- **Research Problem: -**

Research problem revolves around finding suitable answers for the following questions: -

1. What does the **AC** mean and what are the cases that investigate its responsibility on the damages caused to passengers?
2. What are the cases where no longer **ACLDCPs**?
3. What is the basis of the **ACLDCPs**?
4. What is the mean, which regulate the relationship between the passenger and **AC** through it, including compensation for damages?

5. What are the efforts by the international community in order to organize air navigation, whether these efforts are sufficient in itself, or it requires more efforts?
6. Is the **NL** of countries deemed sufficient to regulate air navigation, and whether this legislation keep pace with international efforts or not?
7. Is the **AC** responsibility of the limitations of the case according to what is stipulated in **InCs** and **NL** or not?

- **Systematic Research Topic: -**

We have adopted in writing this analytical research where this approach relies on the legal texts of **InCs** analysis as well as domestic legislation related to **ACg** for analysis to find out the advantages of those texts, identifying its deficiencies and suggest treatments which they can cover those defects and avoided.

- **Hypothesis of the Research Topic: -**

We have adopted in writing this research on one comprehensive hypothesis that runs from the basic point, which clarifies the basis of the **ACLDCPs** as well as to prove the cases in which the **AC** is liability for and determine the cases in which the **AC** is no longer fulfilled with the responsibility statement.

- **Research Framework: -**

The air navigation is considered an image of Carriage, along with images of both maritime carriage, road carriage, we are at the heart of this research we will look into the responsibility of an **AC** only for damage to the rest of carrying passengers either images we see it worthy to study in an independent research.

- **The Structure of the Research Topic: -**

For the purpose of briefing the research topic in all aspects, we decided to split it into three chapters preceded by an introduction, where we discussed in the first chapter the essence of **ACg**, through dividing it into two requirements; the first, we dealt with the concept of **ACg**, while the second requirement we clarified the effects of **ACgC**.

The second chapter we dealt with the legal regulation of the responsibility of **AC**, and we divided it into two requirements; the first, we discussed the basic responsibility of the **AC** in **WaCs** of 1929. While in the second requirement, we specify essence of **ACL** under other **InCs**.

The third and last chapter was dedicated to notify the cases of implementation the **AC**'s responsibility and the impact of that through dividing it into three requirements; the first one, we discussed about cases of implementation of the **ACL**, while in the second requirement we discussed how to determine the **ACL** in the contract of carriage of passengers, finally we showed the results arising from the civic responsibility of **AC**.

Moreover, we will finish our research with conclusion including the most important findings and recommendations that we will reach.

Chapter One

The Essence of Air Carriage

1. The Essence of Air Carriage

It is known that there are many means of carriage and multiple, it may be land carriage, sea or by air. These three methods revolves its content around a single meaning whether it is presence or absence, and this sense is the carriage of persons or goods from a place to another, but the point of difference between these three methods is the carriage mechanism or means used in carriage, the first carriage is by cars or other ground carriage, while the second is by means of marine carriage of steamship and ships and other means that are used to carriage people and goods from a place to another by water, the third which is the final way that used to carriage people and goods in aircraft or **ACg** (Andrew Tettenborn & Baris Soyer, 2014). Since we are in the framework of this study, we have studied the responsibility of **ACLDCPs** so we have decided to limit this method by study, therefore to cover the vocabularies of this chapter of all its aspects, we have decided to divide this chapter into two topics; the first topic we assigned to go deeper in the concept of **ACg**, where we will study definition of the **ACg** and show its properties as well as the reference to the sources of the law of **ACg**, while in the second topic we will look into the effects of **ACgC** as follows: -

1.1 The Concept of Air Carriage Contract

The search in the concept of **ACgC** requires studying three very important issues; first, is to define where a clear and a specific definition must be given to **ACg**, the second issue is showing the **ACg** properties where there is a range of properties characterized by **ACg** and the importance of these properties, which in turn helps to determine the nature of the contract of **ACg** that we have decided to deal with it through the study, while the third and final issue, which it is worthy of research and study within the framework of the concept is the sources of **AL** and **ACg**, or where the legal system comes from which governing the **ACgC**, therefore to cover the vocabularies of this topic from all its aspects we have taken upon ourselves to evaluate this topic to three requirements, as follows: -

1.1.1 Definition of Air Carriage Contract

The accuracy of giving the definition of the **ACgC** requires us first studying the definition of **ACgC** on two levels; linguistic and idiomatic, so we divided this requirement into two sections where we will discuss in the first section the definition of **ACg** as a contract in the Arabic language while in the second section we will study the definition **ACgC** idiomatically as follows: -

1.1.1.1 Definition of Air Carriage Contract in the Language

It is noticed on the term above that it consists of three parts as below: -

1. Contract
2. Carriage
3. Air

Where each term has its linguistic meaning; First, *Contract* (as a verb) makes a contract, the man makes a contract, there was aphasia in his tongue and he sworn: the sense confirmed by inadvertently documented and determination to honor it (Abadi F., 1998). The contract is a convention between two parties each one is committed to implement what has been agreed. Second, *Carriage* means carrying things from a place to another, or from a position to another, this transformation is called moving (Abadi F., 1998). Third, *Air* which means what is intended between the sky and the earth (Ocean dictionary, 2003).

1.1.1.2 Definition of Air Carriage Contract in Idiom

Jurists cited many definitions for **ACgC**, we will refer to it, or to some of them, trying to reach a precise, comprehensive and inclusive definition for international **ACg**.

A part of Jurists defined **ACgC** as ((The convention concluded between the one who wishes to travel or the consignor and the **AC**, where the second one undertakes whereby to transfer the passenger and his luggage, or **CGs** by air from a place to the exact place of the contract for a fee paid by the travel or consignor)) (Abu Zeid F., 1982). Through extrapolation and analysis of this definition, it shows to us that **ACg** is a contract like the rest of the contracts of carriage, but the difference lies in the mechanism of execution of the contract (or the means of carrying) at a time when the carriage inland carriage contract is by car or other means of land carriage, the carriage by sea is by ship or steamship and the carriage by air is by aircraft.

Others go in the definition of **ACg** the contract to say that: the convention undertakes whereby a person is called a carrier against another person called the traveler or the

shipper to carriage him with his luggage, or carriage his goods from a place to another during a certain period of time by the aircraft for specified fee (Al-Mutairi W., 2011). Itis noticeable about this definition that it does not differ from the previous one only in two issues; first, the limit of the means of carriage (by airplane) and our part, we do not agree on this limitation where it can be done by other means not the airplane, this definition also adds a statement for (specified fee) where is it logical and foregone conclusion follows carriage process. While others define **ACg** as (a contract requires a person called **ACg** to transfer someone else called passenger, or carriage someone's goods called the shipper or the consignor to another place by plane in exchange for royal service recipients fora specified fee (Dewidar H., 2000).

The **ACgC** is also defined as the kind of carriage which transcends executive of regional borders of single state and that is between two persons; the carrier and the passenger, where the first vows to transfer the second or his goods from a place to another for a specified fee (Dr. El-Arini M. F., 2002).

This definition refers to international **ACg** which transcends regional borders of the state. This means it excludes domestic **ACg** which its content revolves on the carriage of goods and people from a place to another with a specified fee by airplane through the regional borders of the state.

We will content ourselves with such definitions because the definitions we have listed though they are differed in the style of Drafting, they are consistent in the sense where the content in all these definitions is one and **ACgC** can be defined as a contract concluded between the person who called the carrier undertakes thereby that contract to transfer of the person who is the other party to the contract or the transfer of his luggage or his goods from a place to another at a specific time with a specified fee by airplane.

1.1.2 Characteristics of Air Carriage Contract

ACgC characterized by a set of characteristics, it serves as a mean in which we can reach to determine its legal nature **ACgC**, it is described as a compliance contract, also described as a **CsC** as well as its commercial nature, to give more about these characteristics we have taken upon ourselves to expand (in its characteristics) in the three sections, where we will specify each of the characteristics mentioned above in an independent section as follows: -

1.1.2.1 Air Carriage Contract as a Consensual Contract

It is known that **CsCs** are contracts which take place with convergence of two wills (parties to the contract) and those wills should be free of defects so that the contract is valid, **ACgC** is such as these contracts which are made only with the convergence

of admission and affirmative, requiring that the consent is issued by a will free of defects and **ACgC** requires only **CP** and goods (Al-Mutairi W., 2011) also (Marian Hoeks, 2010).

It should be noticed here that there are many **NL**s confirm what we have mentioned above and they deal with the **ACgC** as **CsC** which are made with convergence of admission and affirmative, this is approved in Kuwait trade law by saying (the contract of carriage is made ... only with the convention) (See Article (161) of the Kuwaiti Trade Law No. (68) in 1980).

This is also stipulated by the Jordanian legislator in the legislation of the **ACgC** as (the contract of carriage is made both parties agree) (See Article (70) of the Jordanian Trade Law No. (12) in 1966).

If we analyze these two articles, it will be shown to us clearly that both legislators (Kuwaiti and Jordanian) have dealt with the **ACgC** as it is **CsC** which is made as soon as consensus or convergence of admission with affirmative. The expressions contained in articles mentioned above contain explicit statements indicating clearly that meaning.

It worth mentioning here that **ACgC** is not of formal contracts that require the necessity for the availability of a certain formality for the purpose of convening, therefore the role of the documents edited by the **ACg**, whether the document is a ticket or a form of luggage or a letter of carriage a person only in proving the existence of the contract and its content, this is what has been explicitly provided in Warsaw Convention of the **ACg** (See Articles (1-2) of the **WaC** of 1923).

Since the **ACgC** is made with the convergence of the traveler's admission or the consignor with the **ACg**'s affirmative, therefore the traveler or the consignor has the right to reject the formation of the contract if the **ACg**'s affirmative is not in line with his interests (Al-Mutairi W., 2011).

1.1.2.2 Air Carriage Contract of Compliance Contracts

Compliance intended to submit to the specific conditions of the contract in advance with the absence of the role of the other party's will where he cannot discuss the terms of the contract, the **ACgC** is considered the **CoC**s because **ACg** companies exposure their printed conditions to all which are united conditions that does not accept the discussion so the passenger has nothing to do but to accept those conditions therefore the acceptance in this case is compliance (See the judgment rendered in Cairo Appeals Court No. 12/1957).

It should be noted here that considering **ACgC** of **CoC**s do not deprive it from the nature of consensual terms where this contract remains ultimately a recipe or a nature of consensual because it was originally based on the basis of satisfaction (admission and affirmative), this makes it a contract of consensual recipe as well as it is considered a contract of compliance (Dr. Ahmed M., 2000).

1.1.2.3 Air Carriage Contract as a Commercial Contract

ACgC is considered a **CmC** once it is initiated on contracting where **ACg** is not different from other types of carriage only in a mean or a tool of implementation, the contract is always considered commercial whenever it is practiced for professionalism, as for shipping goods or passenger, the work is not commercial, only if he is a merchant and the carriage is on the occasion of his trade (Al-Mutairi W., 2011) also (Michael Joachim Bonell, 2004). This is stipulated in Kuwaiti trade law by saying (the following related businesses are considered commercial businesses regardless of the its based prescription or dissuades it: -

1. Banking transactions.
2. Current Account.
3. Exchange and financial equations
4. Commercial agency and brokerage.
5. Promissory, bond of order and checks.
6. Companies establishment, sale and purchase of its stocks and bonds.
7. General stores and fees of the deposited money.
8. Extraction of minerals, oil, piece of stones and other natural wealth resources.
9. Insurance with its different forms.
10. Stores provided for the public.
11. Distribution of electricity and gas.
12. Carriage by land, sea and air (See article (5) of the Kuwaiti Commercial Law No. (68) in 1980).

The Jordanian legislature in the trade law states that the following business by the virtue of their inherent nature doesn't considered as commercial works: -

1. The purchase of goods and other physical movable in order to sell them at any profit either it is sold on its statue or after operating it and moving it.
2. Buy those movable things to rent or lease them to rent them again.
3. The sale or leasing and renting again for things purchased or leased in the manner specified above.
4. Exchange business, financial swap, and public and private banks transactions.
5. Supply of materials.
6. Industry business that are associated with agricultural investment only if the transfer of materials is a simple manual work.
7. Carriage by land or by air or on the surface of the water (See article (6) of the Jordanian Trade Law No. (12) in 1966).

This is approved in Iraqi Trade Law No. (30) in (1984), where it states the following (The following business are considered commercial business if they are for profit, this intention is assumed unless the contrary is proved: -

1. Buy or leasing property whether it is movable or immovable to sale or rent it.
2. The supply of goods and services.
3. Import and supply of goods and business of import and export offices
4. Industry and the extraction operations of raw materials.
5. Publishing, printing, photography and advertising.
6. Construction contracting, restoration, demolition and maintenance
7. Services of tourism, hotels, restaurants, cinemas and stadiums offices, and other various displays.
8. Sale in auction shops.
9. Carriage things or people…) (See Article (6) of the Iraqi Trade Law No. (30) in 1984).

It is noted that the Iraqi legislature, and exactly in the ninth paragraph of Article 5, considered the carriage is generally a commercial business, whether it is for people or things, and whether carriage is by land, sea or air.

1.1.3 Sources of Air Law

Some may wonder about the rules governing **ACg** process and the sources from which it Draws those rules its presence, it should be noticed here that there are a variety of sources that are considered the foundation to be built upon in organizing the **ACg** process, some of those rules originating **InL** (conventions), others derive its existence from the **NL**, due to the importance of this subject, we have taken it upon ourselves to refer to each of these sources independently as follows:

1.1.3.1 International Sources

There is a wide range of **InCs** have undertaken the task of organizing the airlift, we will refer to the most important of these conventions in the section, as follows:

1. *Paris Convention in 1919* (Dr. El-Arini M. F., 2002)

Itis considered as the first convention in organizing **ACg** and has played an important role in its development by setting the foundations of air navigation where this convention is considered the first constitution for **ACg**, it should be noted that this convention has no longer value for the present time but it has a historical value as the first **InL** in the field of **ACg** ("Paris Convention of 1919", 2016).

2. *Chicago Convention of Airline in 1944*("Chicago Convention on International Civil Aviation", 2016)

The conclusion of this convention was due to the inability of the relevant conventions of air navigation and **ACg**, which has been set after the First World War, there are four appendices relating to this convention, and most important ones are:

1. Interim convention on **CA**
2. International **CA** convention

What concerns us is precisely the international **CA** convention, which approved the following principles (Dr. Musa T. H., 2005):

3. Determine the competent law to govern people, objects and aircrafts.
4. Equality in treatment and non-discrimination
5. Obligation of states parties to unify and simplify the rules and procedures in the scope of air navigation

3. *The convention for unifying certain rules relating to International air carriage* ("Montreal Convention", 2016).

This convention didn't limit to set rules that aim to ensure the safety of aerial vehicles and their movement but also worked to enact **InL** to protect the dealers with this new mean in carriage.

It should be noted that this convention contains (57) articles distributed on seven chapters to deal with the following issues:

1. The scope of applying the convention
2. Carriage documents and obligations of the parties of the carriage contract in this regard
3. Carrier liability and extent of compensation for damage
4. Carrying Vehicle
5. **ACg** done by someone other than the contracting carrier
6. Other provisions related to mandatory application of the convention, liability insurance and the exceptional carriage.
7. Final provisions relating to the signing, ratification of the convention, its validity and its denunciation, also its relationship to the **WaC** and the protocols, as well as its amended and supplemented conventions, and reservations (Dr. El-Arini M. F., 2002).

It is noticed on this convention as a basic convention that dealt with organized **ACg** operations (people and objects) in an integrated manner to some extent. Unlike the

rest of the **InCs** which focused heavily on the safety of the aircraft and its attention (UKMIL, 70 BYIL, 1999).

1.1.3.2 National Legislation

States initiated on the impact of the emergence of aerial vehicles and their use as a mean of carriage to establish the necessary legislation, for organizing it, the rule of relations and legal facts arising from its movement, and using it. It should be noted that there are many countries that issued **NL** have undertaken the task of organizing air navigation and put provisions that dealt with organizing the relationship between the carrier and air passenger, this will be shown in the second chapter of this studying.

1.2 The Effects of Air Carriage Contract

The carriage contract follows reciprocal obligations between the parties to contract the carrier and the passenger or the consignor (See also the Guadalajara Convention, 1961) therefore, for the purpose of clarification, we will discuss in this section these effects through referring to the carrier's obligations in a requirement and obligations of the passenger or the consignor in another requirement, in order to note what mentioned above, have we decided to divide this section into two requirements as follows:

1.2.1 Air Carrier's Obligations

The carrier in the **ACgC** is obliged either to carriage the passenger and deliver him to the destination he refers, or he is obliged to deliver the goods, which has shipped by the consignor to the consignee destination, therefore (Chapman and Warren, 1979), through this introduction it clears to us that the carrier in the **ACg** has to do two types of obligations; the first related to carriage persons (passengers) and the second related to carriage goods, in order to cover vocabulary of this requirement from all its respects, we have decided to divide it into two sections, where we will discuss in the first section the carrier's obligations in the contract of **CPs** while in the second section we will discuss the carrier's obligations in the contract of **CGs**, as following:

1.2.1.1 The Carrier's Obligations in the Contract of Carrying Persons and Goods

The carrier in **CPs** is responsible a set of obligations, we can summarize them as follows:

1. Once the carrier signed the carriage contract, he is committed to provide the traveler a ticket that include mandatory data legally required, the carrier must edit it with legible handwriting and hand it to the traveler before departure with sufficient time so that the traveler know the carriage conditions.
2. The carrier is obliged to carriage the passenger from a place to a destination on the plane and it must be valid for air navigation, if the passenger convinced about the implementation of this commitment, the carrier should Compensate him (See Paris, 13 Fev, R, F, D.A, 1970).
3. The carrier also should endure the liability to keep passenger's safety during **ACg** period and take him to his destination without delay, as well as carrying of traveler's personal luggage (Alexander Anolik, 2013).
4. Finally, the carrier committees to give back the passenger all or some part of wages paid, according to the carriage conditions, if he doesn't implement the trip on condition if this not to be due to an error caused by the traveler (Dr. El-Arini M. F., 2002).

1.2.1.2 The Carrier's Obligations in a Contract of Carrying Goods

Along with the commitments that we have mentioned above that related to carriage persons, there are a number of other obligations incurred by the carrier in a contract of **CGs**, we can count those commitments, in the following:

1. The carrier's commitment to deliver the goods, where the carrier is committed to this commitment as soon as the contract is signed, and according to these conditions if he didn't deliver or delay it, he will be liable to the consignor (Ellen E. Wilhelmsson, 2016).
2. His commitment to ship the goods and the person, also put the goods in the plane to reach them to the destination airport (Dr. El-Arini M. F., 2002).

3. His commitment to preserve goods during carriage and this is what is referred in **WaC** of 1929, through a defined time scale for the validity of the system specified for responsible of **AC** (See Article 18 of the **WaC** of 1929).
4. The carrier's commitment to carriage in time and here the carrier is not obliged with the limited duration.
5. The carrier's commitment to deliver the goods to the consignee, and often the consignee is the person specified in the **ACg** document who commits the carrier to deliver to him, it can be delivered to another person when the consignor ask him that, the carrier cannot implement this order till he receive the original copy of carriage document from the consignor so the consignor cannot satisfy with his image or any other copy of an original (Dr. Musa T. H., 2005).

1.2.2 The Passenger and the Consignor's Obligations in The Air Carriage Contract

The passenger or the consignor bears a number of commitments in the contract of **ACg** in order to show the content of these commitments, we have taken upon ourselves this requirement into two sections, where we will discuss in the first section passenger's commitments in the contract of **ACg**, while the second section we will discuss the consignor's obligations in a contract of **CGs** as follows:

1.2.2.1 Passenger's Obligations in the Air Carriage Contract

The passenger or the traveler is committed to a number of obligations in **ACgC**, it can be identified in the following (Dr. El-Arini M. F, 2002):

1. The obligation to pay the fare and this is the main obligation of the traveler's responsibility.
2. Book a place for him on the plane: where the travel ticket does not give passenger the right to move through the air automatically so he has to book his place on the plane.
3. The passenger's commitment to respect the **AC**'s instructions where he is obliged to be at the airport on time as well as taking into account the administrative panels and regulations... etc.

4. The traveler to undergo inspection procedures carried out by the airport authorities before heading to the plane.

1.2.2.2 The Consignor's Obligations in the Air Carriage Contract

The consignor is committed to a number of obligations in **ACgC**, we will refer to them in the form of points as follows:

1. The consignor's commitment to deliver the goods to the carrier

   Originally delivering goods to the carrier is not a condition for signing the contract, however, this does not prevent it to achieve this delivery and this is what is stated in the Jordanian trade law by saying (the contract of carriage is done when the two sides agreed on the elements and conditions even before the delivery of thing to the carrier by the consignor unless the two sides agreed explicitly or implicitly to delay the concluding of the contract until after delivery) (See Article 70 of the Jordanian Trade Law, No. 12 of 1966).

   It is worth mentioning that the Iraqi carriage law, as well as Jordanian Trade law have given the carrier the right to lock up the goods sent until the carriage fare is met (See Article 75 of the Jordanian Trade Law, No. 12 of 1966 as well as Article 39 of Iraqi Carriage Law.

2. The delivery of the necessary documentation for the Implementation of carriage and the obligation imposed by the nature of the **ACgC** of cross-border, where it is not allowed to pass or unload unless the carrier highlights some of the necessary documents.
3. Paying the freight: where the consignor is obliged to pay carriage fare which include here all the necessary expenses for carriage, such as premium pay fees, ground and storage fees (Dr. Musa T. H., 2005).

Chapter Two
The Legal Regulation for the Air Carrier Liability

2. The Legal Regulation for the Air Carrier Liability

The responsibility of the air carrying viewed so many advancements, beginning with the **WaC** in 1929 that adopted with a middle solution between Alankulosxta Direction and Lation Direction. The first direction was considered with the responsibility of the general carriage as contractual liability, and the responsibility of the private carriage as a reduction liability. While the Latin Direction was considered with the responsibility of the carriage based on the idea of the supposed mistake, in order to agree between these two systems, the **WaC** was taken from the Angelo American Idea, the diligence commitment idea, and it was taken also from the Latin Direction, the liberation of the responsibilities base. The carrier liberates from the responsibilities if he proves that he did the necessary care to avoid the injury (Abandari M., 2006) (The commitment idea to achieve the result).

Du to what the **AC**'s issues exposed to the amendments since the **WaC** in 1929, through Hague Convention in 1966, **MC** in 1966 and the Fourth Montréal Protocol in 1975 and Montréal 1999, it's necessary to expose to the most important developments that it shows this responsibility through these Conventions.

It's known that the **CA** law was characterized with the international features because of the navigation tool which is an aircraft, as well as the Air Environment which is the aircraft that fly through it, this is considered the Regional Border States (See e.g. Cumulative DUSPIL 1981-8, Washington, 1994, vol. 11), which is expose to the similar risks, by the rule of this international Aeronautics nature and the need to consolidate the concerning rules that is aimed to regulate the aviation, ensure the safety of the air navigation, and to avoid the legal taxation problems (Ronald I.C. Bartsch, 2016). The International Community's ratified a set of **InCs** which can be categorized as follow: -

1. **International Conventions**, which is related to the security and safety of air navigation and **CA**, including: -
    - *Tokyo Treaty 1963*, that specialized to the crimes and acts which are committed on the board.
    - *Hague Convention 1970*, that specialized to the suppression of the unlawful Seizure of Aircraft.
    - *MC 1971*, that specialized to the suppression of the unlawful acts against the **CA** Security.

- *Montréal Protocol 1988*, about the suppression of the violence acts at international airports, which supplementing to The Hague Convention 1971.
- *MC 1991*, about the detection of the Plastics Explosion.

2. **The International treaties in the field of the Public Law which are: -**
   - *Paris Convention 1919*, about organizing the Air Navigation.
   - *Ban- American Convention 1928*, about the Air Navigation which is signed in Havana.
   - *Chicago Convention 1944*, about organizing the Sovereignty State over the airspace.
   - The International treaties in the field of the Private Law.
   - ***WaC 1929***, about unification of the same rules concerning the **ACg**.
   - *Treaty of Rome 1933*, about unification of the provisional safety rules upon aircraft.
   - *Brussels Treaty 1938*, which is specialized about unification of some rules concerning the assistant and aircraft rescuing.
   - *Geneva Convention 1948*, about the international recognition of the rights that are given to aircraft.
   - *Treaty of Rome 1952*, concerning the damages caused by aircraft on the surface.

As this chapter deal with the natural responsibility of the **AC** on the **InCs**, we will discuss these Conventions such as **WaC**, Hague Protocol 1955, Montréal Protocol 1966, Guatemala City Protocol 1971, and finally **MC** 1999.

2.1 The Basic Responsibility of the Air Carrier in Warsaw Convention in 1929

The lack of unspecific international legal rules, that deals with organizing the air carrying, it was stimulated various countries especially the major industrial ones to contract a series conferences to reach a general rule that organizing the Civil Air Navigation Issues. These conferences had resulted since the birth of **WaC** 1929 and entered into force in 3 November 1939. These Conventions dealt with special rules in carrying documents, the responsibility of the **AC**, mixing Carriage and ratification special rules and modifying them.

The lack of inability in this Convention to treat all these subjects accurately, the ongoing developments which took places the Aviation World whether to expand

network lines, the technological development in manufacturing aircrafts and increasing the operations of carrying passengers and cargos. It has become necessary to put an amendment continual on this Convention which it will shows later.

In this concern, we should clarify that the rules of these Convention and its amendment required the following points: -

1. The Air carrying should be an international one.
2. International air carrying should be equivalent.
3. The willing of the contract parties should go to the internationality of the **ACgC**.

In fact, the **WaC** texts reflected the balance between the direction of the Anglo-American and French one. Therefore, they set up the responsibilities of the **AC** on the basic contractual responsibility its bases of supposed mistake, it means that the responsibility of the **AC** upon the rules of this Convention was contracted once the desired result of carrying contract is not achieved, which means to carry the passenger to the destination point safety, therefore, the passenger was not binding to prove the carrier's mistake because it was on the carrier's himself (Al-Assiouti TH. A., 1968).

This convention did not discuss the important issue which is still raises questions, it lacks the definition of the idea of supposed error, it did not make any criteria to select them, thus the way of jurisprudence and discretionary power of the trial court opened. With this legislative shortcoming, it has become necessary to refer to article 20 of this Convention for determining the carriage's responsibility, where this article stipulates that the carrier is not responsible for any damage if he and his assistances have taken all the necessary conventions to avoid the damage or if it was impossible for them to take all the necessary conventions.

Through the opposite conclusion of this text it can be said that the carrier will be responsible for any presumed errors by himself, if he does not prove that he has took all the necessary conventions to avoid the damage, and this also leads to the important of knowing what is meant by the necessary measures.

In fact, the explanation of the article (20) of **WaC** is ranging from a narrow explanation of the presumptive error and flexible explanation of it (See article 20 of **WaC** of 1929). The owner of the first theory saw that the presumptive error is considered accrued if the carrier and his assistances did not prove that they have taken all the necessary conventions which caused the damage. However, article (20) of the Convention does not require a direct relationship between avoiding the damage and the incident of causing the damage, so the introduction of this concept of presumptive error means that the considered the responsibility of the carrier an absolute responsibility based on a presumptive error which is no accepting of approving the opposite (Dr. Musa T. H., 2005) only in the theoretically way which is practically out of the ability of the carrier to proof the opposite evidence.

While the owners of the extensive explanation theory of the presumptive error believe that the carrier gets rid of the responsibility if it proved that he has taken all the needed requirements carefully from the carful carrier.

In fact, this vision is fits into the concept of English law which requires from the **AC** carefully to do his best to get rid of the presumptive error, according to this law the care is obviating if he infringe some civil air navigation legal rules. As if the validity of the plane certificate for navigation is null in case the flight crews do not hold the required academic certificates or in the case poor weather condition and it is warned by the relevant authorities not to fly (Note also the Conliention on International Interests in Mobile Equipment, 2001 and the Draft protocol on matters specific to space property).

Concerning the cessation of the judiciary in the interpretation of the idea of presumptive error according to the **WaC**, it can be seen from the verdicts issued by the French and American courts that these courts have embraced the broad concept of the idea of presumptive error if the causes of air disaster are known, while I took the idea of a narrow concept of the presumptive error if the causes of the disaster is not known, meaning that their decisions were in favor of the carrier in the first case and in the interest of the victim in the second case.

It notes that opposes judicial conduct with the purpose of the Convention, which was designed originally to integrate International **ACg** rules, which was addressed later in the 1955 Hague Conventions.

In fact, the Warsaw Treaty came by legal balanced between the opposing trends in the various legal systems, and developed compromise solutions by adopting the idea of carrying subordination and supposed error with enabling the carrier to push the responsibility from himself if he proved that he makes the required care for the completion of the carriage process (Abdel-Latif A., 2002). Thus, according to the **WaC** 1929 (Articles 21 and 17) we can say that the **AC** responsibility were contractual liability based on presumptive error, simply we can say that the carrier takes the responsibility just because the desired result is not achieved in the transfer process, but he can get rid of this responsibility in accordance with Article (20) if it proved that the reason of not achieving the desired result was because of a foreign reason, and if he proved that he had taken all reasonable precautions and measures to avoid the occurrence of the damage, or that it was impossible for him and his followers to take these measures.

To achieve a balance between the carrier's interest and the passenger's, in accordance with article 22 of the Warsaw the convention, the traveler cannot get compensation beyond what has been set by this article, and the article (23) stipulates the invalidity of each condition designed to exempt the carrier from responsibility or mitigating , also stipulated in article (25) to deny the **AC** to take advantage of the provisions of the convention if he has a bad intention, or if the damages that caused to the goods was due to his cheating equivalent with the law of the state that poses the dispute (Ridhwan F., 2004).

Over time, the need arises to evacuate the amendment in the provisions of the **WaC** to protect passengers and goods owners against the **AC**, so provisions were amended

of this convention with the provisions of The Hague Protocol 1955, however, this protocol did not change the basis of the carrier's liability, which has been based on the supposed error, but increased the compensation (Ghannam Sh., 2009).

2.2 Essence of Air Carrier's Liability under other International Conventions

1. *Essence of air carrier's liability in the Montreal Convention of 1966*:

Following the objection of the United States, The Hague Protocol of 1955 and its threat to withdraw from the **WaC**, the International Federation of International Carriage reach a settlement with the airlines to make a deal with the US **CA** Authority, which called the Montreal convention of 1966. This convention was actually to satisfy the United States so it is stipulated in article I of the validity of its provisions that the point of departure of the plane or its final destination or its break point should be in the US territory.

AC liability under this convention has become the basis of bearing carrier of the risk and not on the basis of the idea of assumed, so is this convention changed the nature of the liability of the carrier and made it objective responsibility, this means that his responsibility arises as soon as the traveler injures and he may not eliminate this responsibility only by proving the error is made by the injured (The Times (London), (10 May 1912) (39895): 8 (3)).

In fact, the Montreal convention differentiate between the responsibility for the damage caused to the passenger or goods and personal belongings, it became objective responsibility in general, while the responsibility for the delay damages (carrying of persons and goods) so it remained contractual liability based on assumed error as it was under the **WaC**.

Montreal Convention have been subjected to many criticisms for being prejudice to the principle of equality among travelers where the traveler who began his journey or ended or docked in a US airport, has better advantages than other travelers (Ahmed AF. M., 2007), hence the calls appeared to achieve equality among travelers regardless of their place and time of the journey where Guatemala Protocol of 1971 appeared.

2. *The nature of the air carrier liability in Guatemala Protocol of 1971.*

Despite this Protocol been outside into force (Ghannam Sh., 2009), it was canceled by the issuance of the Montreal Convention of 1999, however, it actually added some innovations that changed the liability of the carrier, where this Protocol differentiate between the carrier's liability for accidents occurring to the traveler during the implementation of **ACg** such as death or injury and the carrier's liability for passenger the delay or loss or damage to his registered luggage.

According to the rules of this Protocol, the carrier shall be responsible as soon as the traveler died or wounded or lose his luggage, the carrier may not get rid of the liability unless he proves that death or injury happened because of the health status of the traveler (article 1/4), or if he proves that the loss or damage of the passenger's luggage goes back to the nature of the baggage or its defective (article 2/4) as for the liability of the carrier for the traveler delays or delay his bags and the damages resulting from loss or damage to goods or registered luggage, the liability of the carrier remained as prescribed in Article 20 of the **WaC** , or means that the carrier's liability in this case is the contractual responsibility based on assumed error, thus the carrier can no longer rid of the responsibility in this case unless he proves that he and his followers have taken all necessary measures to avoid the damage (Abu Zeid R., 1983), or it was impossible for them to take or the damage was the result of the nature of the goods themselves, (Article 2/5) of the Protocol.

3. *The nature of the air carrier's liability in Montreal Protocol IV of 1975:*

This protocol made amendment to the carrier's liability where it made the **AC** by the force of law liable for damages or destruction, or loss of the goods as long as the act that caused damage during **ACg** process. Thus, this protocol expanded its objective responsibility for **AC** for damages that occur to goods such as loss or damage, while it reduced at the same time the role of assumed error as a basis for liability of the carrier and that means the implementation of the carrier's liability for damage to goods only to damage or lose or destruction it during **ACg** without proving the source of fault whether it is made by the carrier or his subordinates, and that the carrier cannot get rid of the responsibility even if he proves that he and his followers have taken the necessary measures to avoid the damage (Lekic, Slobodan, 2011).

Thus the idea of supposed error will not be take any longer to determine the carrier's liability, except in case of delay in completing the process of moving people or cargo carriage, according to articles (1/4, 2/4 of the Protocol). But this does not mean lack of taking responsibility in specific cases limited to them if it is proved that the caused to the goods by damage or loss or destruction due to:

1. The nature of the goods or self-defective (Dr. El-Arini M. F., 2002).
2. Defective packaging of the goods, which was by someone other than the carrier or its affiliates or agents.
3. State of war or armed conflict.
4. Act of public authority carried on the occasion of the entry or exit of goods or transit through its territory.

Thus it became the **ACL** under the **WaC**, particularly after the amendments made by objective responsibility is based on the risk, and so we can say that the Fourth Montreal Protocol, did not happen a change in the carrier's liability, but Broadening the scope of substantive responsibility in order to include the carriage of individuals, also the carriage of goods along with identifying the means of payment would be the

responsibility of the carrier exclusively (Hone, Thomas C., Norman Friedman and Mark D. Mandeles, 2001).\

4. *The responsibility of air carrier in Montreal Convention (1999)*

Since this convention has been taken into effect on 4th of November 2003, the convention has become the main **InC** in matters related to air navigation and aviation. Then reading from Article (18, 19, 21), it has been indicated that the fundamental responsibility of the **AC** could undergo into a complete amendment in accordance with this convention that distinguishes between the following cases:

1. Regarding to the damages occurring to the goods for instance, deterioration, loss, or deformation, the responsibility of the carrier in this case according to the article (18) is a substantive responsibility based on damage. However, in the meanwhile, as it's mentioned in the fourth Montreal Protocol in 1975, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

   (a) A defect inherent in the goods or due to poor quality or self-defect.

   (b) Defective stuffing of that cargo performed by a person other than the carrier or its 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.

2. While in case of delay carrying passengers or goods or baggage, this convention according to article (19) remained on the nature of that contract of the carrier's responsibility on the supposed error which proves the opposite, it means the carrier shall not be responsible for damage caused by delay if it is not proved that he and his followers took all the measures that could reasonably be required to avoid the damage or that it was impossible for him or them to take such measures.

3. Concerning the damage sustained in case of death or bodily injury of a passenger, this convention has set a system of two levels for compensations, each has a different legal structure. As for damages arising under the first level, the passenger will request for compensation which is not exceeding 100,000, the carrier's responsibility is based on objective liability according to paragraph 1 of article (21), while the **AC** liability in the second level

according to paragraph 2 of article (21) is based on the supposed mistake where the demands of injured exceeds more than 100,000.

In the analysis of those articles, it showed that the Montreal Convention of 1999 adopted the idea of supposed error in both cases; delay on carrying the passengers or goods or baggage and the damage caused to passengers in the second level. The objective liability applies on both cases; the damages caused to goods and passengers in the first level. Therefore, the responsibility of a carrier towards individuals is based on objective liability or on the base of risks and bearing the results, to protect the passengers and achieve the balance between the interest of carrier and the passengers with his goods and baggage under the diminish of weather risk by the technological evolution (Radwan F. N., 2004).

It's noticed that those who frame Montreal Convention of 1999 insisted on **WaC**s of 1929 and establishing relationship between both conventions, where the article (1/55) of Montreal stipulated that this convention prevails on any rules that apply to **ACg**, but this text raises questions about the meaning of (prevail) and if it means to cancel the Warsaw's Convention of 1999. In fact, it shouldn't be explained like that especially it hasn't been stipulated in Montreal Convention the purpose of it. But that is not incompatible with being the Montreal Convention of 1999 is the latest **InC**s in the field of international carriage, it has become the main convention in some countries where some of them apply the provisions both conventions; the Warsaw and the Montreal, while others apply the provisions of one convention (Melhorn, Charles M. Two-Block Fox, 1974).

Indeed, the last convention succeeded in avoiding shortages suffered by **WaC**, especially concerning the basic responsibility and the limiting the compensation. Recent time, some countries apply the rules of **ACg** in accordance with the provisions of Montreal Convention of 1999 especially those provisions related to the reliability of the **AC** towards the passengers or the owners of goods or the baggage, and concerning the reliability of carrier towards persons and injures affected by aircraft, the Rome's Convention (1952) is still valid.

Chapter Three

Cases of Implementation the Air Carrier's Responsibility and the Impact of that

3. Cases of Implementation the Air Carrier's Responsibility and the Impact of that

The importance of this topic requires discussing its details since we are going to talk about **ACLDCPs** then we should discuss the situations that achieved the liability of the carrier, as well as how to identify this responsibility, and what is the damage that requires compensation , the significance also require discussing the impact that achieves the **ACLDCPs**, so we have divided this chapter into three sections; at first we will discuss the cases of implementation of **AC**'s responsibility, while in the second section, we will refer to way to determine the responsibility of the **AC**, and in the third section, we will specify the penalty which follows implementation of the **AC** liability as follows:

3.1 Cases of Implementation of the Air Carrier's Liability

It is known that the responsibility of the **AC** raises in the case of damages caused to passengers, as well as the responsibility for **CGs**, since our topic is limited to the damage caused to the passengers, so we will only refer to them, or **ACLDCPs** (Qwaider T. H., 2004) also (B. Cheng, 1962).

And the responsibility of the **AC** for damages materialize here in three major cases, we will refer to them in the three demands as follows:

3.1.1 The Responsibility of the Air Carrier for the Safety of Passengers

AC is committed to ensure the safety of passengers, or the **AC** is obliged to arrive the passenger to the agreed place safety, it should be noted that this commitment finds its origin in the carriage contract in both French and Egyptian law at a time it comes directly from the law of both English and US (Dr. El-Arini M. F., 2002).

It should be noted that the **WaC** has stated explicitly this commitment by saying the **AC** is liable for damage happens in the event of the death or injury or any harm physical caused to the passenger if the accident that causes such damage has

occurred on aircraft board or during any process of embarkation and disembarkation (Article 17 of the **WaC** of 1929) also (John G. Wensveen, 2016).

It should be noted here that the attempt to determine the nature of the obligation to ensure the safety provided by the convention is considered worthless on our opinion, the nature of the commitment has utmost importance to make clear when providing evidence on the preoccupation the carrier's pact with responsibility and when he attempt to pay it and decompose it (Qwaider T. H., 2004), here it must be noted that there are three conditions that must be provided to verify the responsibility of the **AC** for the safety of passengers, we will refer to these conditions in three separate sections as follows ("Convention for the Unification of Certain Rules Relating to International Carriage by Air", 2016):

3.1.1.1 If the Prejudice of the Passenger's Safety Results from an Accident

At first, we must determine the meaning of the incident where it can be defined as: a sudden reality caused by carriage process and it is associated with it where the origin goes back to the exploitation of the plane, therefore the **AC** is not asked for damages caused by the passenger's assault on another one because the assault did not result from the carriage process and it is not connected to the air exploitation process (Dr. Mohammadayn J. W., 1992) also ("Aviation Safety Information Analysis and Sharing",2016).

It should be noted that the burden of incident proof lies on the injured therefore if he fails in this proof the **AC**'s responsibility eliminates (Dr. El-Arini M. F., 2002).

It should be noted that the **WaC** of 1929 did not specify the meaning of the incident, although they considered the incident as a prerequisite for the implementation of the **AC**'s responsibility (IBP, Inc, 2009).

Here it must be pointed to Guatemala Protocol signed in 1971, which made the incident as all the causes of the damage, whether it is result of the carrying process or other causes whether it is linked to the exploitation of the plane or it is not linked to it, therefore the **AC** is liable for compensation for the damage that caused to the passenger if he a passenger changed the path of the plane and landing in the non-access station (Dr. Al-Baridi M. M., 1985).

We see that it is important to note the position of the judiciary on the idea of the accident, here we would like to say that the judiciary has taken the idea of the accident widely, where the US supreme administrative court in the judgment issued by March 4, 1985 an expanded definition of the incident, by saying (all unusual sudden reality is an external routine of the injured person) (Dr. El-Arini M. F., 2002) this what the rest of the courts have been strained.

3.1.1.2 If the Incident Happens in a Certain Period of Time

Since the responsibility is the penalty for violation of the obligation, it doesn't start once the contract is signed but it starts when the carrier begins to implement commitments arranged by the contract (carriage contract) to his protection (Qwaider T. H., 2004) also ("Paul Stephen Dempsey", 2004).

Accordingly, the question that arises here is when does the obligation to ensure the safety start and when does it expire?? Or in other words what is the period of time which this commitment goes through to be valid, if the passenger caused a damage as a result of an incident happened during prejudice in a manner requiring the responsibility of the **AC**?

To answer this question, we say that the responsibility of the **AC** from the moment the passenger becomes under his command or his subordinates in a basement specified to assemble travelers in takeoff airport to go to the plane prepared to take him, this commitment continue as long as the passenger is on the plane and the **AC**'s responsibility doesn't end till the passenger gets rid of the tutelage of the **AC** by entering him to the arrival airport buildings, therefore the **AC** is not responsible for any damages caused to the passenger outside of that period referred above (Dr. Al-Sherkawi S. M., 1989).

Also if the accident occurred on his way to takeoff airport or in his returning from arrival airport by his own car, the **AC** will not be liable for damages arising out of the incident in accordance with the provisions of the contractual responsibility in national laws, either because the implementation of the contract has not begun yet or because the execution is over, also the **AC** is not responsible for damages caused to passengers during the period of execution of the **ACgC** but it should be in place out of risks, also if he caused a damage during entering to the airport's buildings through the garden (Dr. Musa T. H., 2005).

3.1.1.3 If the Air Carrier Endures the Damage Caused to the Passenger

The **WaC** of **AC** stated this condition by saying (The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger) (See Article 17 of the Warsaw Convention of 1929).

It should be noted that this article (Article 17) did not refer to the psychological harm nor to moral harm which caused controversy among scholars, where obviously through analysis it merely referred to the damage of the death of the passenger or being wounded or any other physical harm (Qwaider T. H., 2004).

This matter arose considerable discussion among scholars about whether article 17 of the **WaC** of 1929 was implicitly referred to the psychological and moral damage or not, to answer this question, two trends was appeared, we will summarize as follows:

1. **The Expanded Trend:**

The owners of this trend see the carrier responsibility is made through psychological and neurological damage suffered by the carrier if it has not been associated with damage to physical, they also see that this interpretation is the most convention with the provisions of the **WaC** and article (17), otherwise it means that the carrier is not responsible for psychological damage, but the responsibility will be limited to only the physical damage, besides applying extended interpretation leads to achieve harmony between the various texts of the convention (Al-Mutairi W., 2011) also ("Kevin Bartlett", 2014).

2. **The Restricted Trend**

Owners of this trend go through this trend that the responsibility of the **AC** is limited to physical damage only because the psychological damage did refer in the text of the **WaC** (Dr. El-Arini M. F., 2002).

For our part, we agree with the owners of the first trend because it reveals a close connection between the human body and the nervous system and psychological device and each one has the impact on other so if any of them hurts, the other one hurt too.

3.1.2 The Responsibility of the Air Carrier for the Delay

Gaining time is an element of the elements that the **ACg** cannot be straightened without it, which is unique to the aircraft and it is the responsibility of the **AC** to commit carrying on limited time and he implement the responsibility if he breached this obligation (Dr. Ahmed F., 1985).

It should be noted that the **WaC** for **ACg** has stated on the responsibility of the **AC** for damages resulting from the delay in the carrying passengers, to implement the liability requires three conditions we will refer to them in three independent sections as follows:

3.1.2.1 Delay on Limited Time

The delay (See article 19 of the **WaC** for **ACg** of 1929) is meant here is to exceed the time of carriage if there is pre-limited period for the implementation of carriage process and despite the clarity of this principle, it has some difficulties, it can be traced into two factors:

1. The **WaC** does not establish a criterion which can identify the meaning of delay that leads to accountability of **AC**.

2. The principle of responsibility for the delay met a stiff opposition from the **AC**s and the international federation of the security of the airline companies under the pretext that it leads to obstruction of air navigation and endanger it, since those navigations depend on different circumstances and the **AC** cannot control on them such as special air conditions which they may allow to fly or not also special conditions related to the ability of the plane to carry the goods (Dr. Adli A.' 2002).

This opposition emerged in the conditions listed by airlines, which stipulates that there is no requirement to complete the carriage in a specific period, also the hours of departure and arrival shown in carriers' schedules, or in any other documents are not a part of the contract of carriage and it is nothing but a rough indicator of the average time it takes the carriage process. The principle of responsibility for the delay became a center of conflict between the divergent interests of the aircraft users and the **AC** because of these difficulties (Al-Mutairi W., 2011) also ("Cancellation/Delay statement from the airline", 2016).

The judiciary had worked hard to resolve this conflict, and therefore work to reconcile the conflicting interests of the **AC**s, users of spacecraft's passengers and shippers, some provisions went to report the health conditions of the carriage contract saying that the carrier doesn't commit with the specified time of carriage, the majority of judicial rulings has trod in this regard to permit judicial conditions of carriage to allow the carrier not to commit with the specified time of carriage as long as these conditions do not release him from liability for damage caused by the unusual delay in carrying process (Dr. El-Arini M. F., 2002).

3.1.2.2 Delay Occurs in a Certain Period of Time

Occurrence of delay is not enough to regard the **AC** responsible but It this delay must be occurred during **ACg** period if it happened outside its framework, the responsibility of **AC** achieved but not based on the provisions of the **WaC**, but according to the provisions of national law (Dr. Diab M. M., 1986) also ("Arpad Szakal LL.M", 2013) and the question that arises here is "what's meant by the **ACg** period"?

To answer this question, theories have emerged in this regard, we will refer to its content briefly as follows- :

1. Geodes' Theory:

Geodes shortened the length of time which is valid since the moment of flying the plane from the takeoff airport to its landing on the ground arrival airport (Al-Mutairi W., 2011).

It should be noted that this theory exposed to criticism because it makes the principle of responsibility for the delay, because short period of the **ACg** to the period in which the aircraft remains in the air makes it difficult for aircraft users set up the evidence of the delay during that period as well as it is known that most of the delay cases delayed before the plane took off (Dr. El-Arini M. F., 2002).

2. Maurice Lemoyne's Theory:

This theory Identified **ACg** period in which the delay occurs in, it is a special period of the **AC**'s responsibility for destruction or loss of the goods, this theory is also hasn't been criticized because if this theory is consistent with the logic when it is in the process of delay goods and baggage, and it's at odds so if the delay results from carrying passengers (Al-Mutairi W., 2011).

It is true through what have mentioned above and based on the **WaC** that the **AC** is responsible for the delay during the periods listed below (Dr. El-Arini M. F., 2002):

1. The delay that occurs during the period time that stretches from the moment the passenger leaves under the command of the **AC** or one of his followers a basement specified to assemble travelers till he gets rid of the tutelage of the **AC** or one of his subordinates.
2. Also the **AC** is asked for the delay in **CG**s during the period in which the goods are in the carrier's custody (Jeff Wilks and others, 2006).

3.1.2.3 Damage that Results from the Delay

The two conditions previously mentioned are non-decaffeinated to implement the **ACLDCPs** but it requires an investigation or the passenger should actually injure (Qwaider T. H., 2004).

At first, we should bring some definitions of damage, where it can be defined as harm that affects the injured in his rights or in his legitimate interest (Dr. Hassan Ali Alznon, 1991).

Also the damage is known as (harm causes the person in his rights or in his legitimate interest, it is a main key of the responsibility because responsibility means commitment to compensation and compensation is estimated as much as the damage is, and by eliminating the responsibility ends) (Dr. Marques S., 1981).

It should be noted that as far as it is concerned with **ACLDCPs**, it is considered that the passenger didn't get in the deadline, which prevents him the chance to participate in the opening ceremony of a global forum invited by a large number of eminent persons for the purpose of receiving the large cash prize in recognition of his experiences (Dr. El-Arini M. F., 2002).

3.1.3 Air Carrier Liability for Piracy Works

Since the late last century **AC** became vulnerable of hijacking attempts, so many countries prompted to help secure international air navigation, the Hague Convention of 1970 related to the suppression of capturing illegal on the aircraft then the Montreal Convention of 1971 for the suppression of illegal acts against **CA** security, the **AC** has been responsible for damages caused to passengers as a result of air piracy acts is subject to the same principles laid down in the **WaC** of 1929, and the convention did not repel the piracy acts related to hijackings airplane and attack on the passengers (Dr. Osman AK., 1983) also ("Privacy policy", 2016).

The question to be asked here is about whether air piracy is considered as an incident, and whether the **AC** bears the responsibility or not?

To answer that, we say that **WaC**, doesn't allows to shorten the incident on technical failure or mechanical dysfunction of the plane during the flight, the air piracy operation is considered as an accident, the incident includes all unexpected sudden reality and independent of the will of the carrier and his followers, it disturb the normal conduct of flight and that means **ACg** companies endure alone these risks for their ability to control them because they are stronger to withstand the liability (Al-Mutairi W., 2011).

The incident must be trapped in **ACg** period or the incident happens on the plane or during the process of boarding or landing, since the convention did not specify the meaning of these phrases so a writer considered the liability of the carrier extends between the plane takes off at the airport and its landing at arrival airport, and liability of the carrier ends once the passenger is out of the plane and depart (United States congress, 2005).

3.2 Determine the Air Carrier's Liability in the Contract of Carriage of Passengers

The search to specify **ACL** requires us to study first, "how to determine the responsibility of **AC**," and then discuss the cases of payment or exemption from responsibility of **AC** for damage caused to passengers (Trimble, William F. Admiral William A. Moffett, 1994), to note to the foregoing, we decided to divide this section into two requirements where we will discuss in the first requirement how to determine liability of **AC**, while in the second requirement we'll refer to the cases that exempt **AC** from responsibility and as follows:

3.2.1 How to Determine Liability of the Air Carrier?

Originally **AC** liability when it upset his commitment and retroactive at the same time deny the error of his side, he commits the compensation and originally estimated compensation as much damage, but the **WaC** emerged from this habit and it put maximum extend for compensation in which **AC** endures and the convention should be less than it (See Article 22 of the Warsaw Convention of 1929).

The compensation is the impact of the consequent availability of staff responsibility of the error, the damage and the causal relationship. It is known that the purpose of the compensation is the damage caused by the aggrieved (Dr. Elina Y., 1992). So the damage must be compensated to the extent of damage which it is actually stipulated in the rules of contractual responsibility, as stipulated in article 363 of the Jordanian Civil Code as well as article 247 of the Kuwaiti Civil Law (Dr. Hussein M., 1990).

The **WaC** of 1929 aimed at reconciling between the interests of **ACs** and the interests of the contractors with passengers or goods owners which it made the convention as the responsibility of the **AC** to a contractual responsibility based on assumed wrong and discussing how to determine the responsibility of the **AC** requires studying a range of issues, we will refer to it accordingly as follows ("Thomas J. Dolan", 1984):

3.2.1.1 The Principle of Determining the Compensation in the Warsaw Convention

WaC decided to put a limit to compensation where the **AC** is not obliged more than in facing injured and advantage of the exact compensation of good shortened on faith carrier also decided to cancel the conditions set by the carrier to be excused from responsibility or mitigate of outmost limit, and this should be noted here that there are a number of justifications behind them to determine the compensation and these justifications are (Al-Mutairi W., 2011):

1. The boom of **ACg** and its continuation will not be achieved if he adheres the carrier to compensate all damage to the impossibility of carrying out in advance the on the risks which it may cause his project, he doesn't expose in advance the value of goods or amount sums which will be paid as compensation for injured passengers because the amount of compensation depends on several factors, as social center for travelers and the circumstances of their injury.
4. The incidents exposed by plane are a lot which lead to the destruction all what is inside. If his responsibility is take place for all damage compensation led to the bankruptcy of the carrier and paralyze navigation's movement. It

should be noted that the convention limited the amount of compensation to 125,000 francs.

3.2.1.2 Determining the Compensation in other Conventions

Along with the **WaC** for **ACg** there are other conventions organized airlift and took it upon themselves the task of determining the amount of compensation to be adhered by the carrier due to the damage caused to the passenger, where adjunct Protocol of The Hague Convention of 1955 determined the amount of compensation by determining the extend maximum to 250 000 Frank (See Article 11 of The Hague Protocol of 1955) also ("Kerin Paulsson", 2009).

While the Montreal Convention of 1966 has raised the maximum compensation which is committed by **AC** for damage caused to passengers to 75 thousand dollars, but that this convention was not exposed to the maximum limit to compensate for the carriage of goods and luggage (Dr. Amir A., 2000).

3.2.2 Cases to Exempt Air Carrier from Liability

Along with the cases in which the **AC**'s liability for damage caused to passengers, there are certain cases eliminate this responsibility.

It stated in the **WaC** for **ACg** on the following (if the **AC** proved that the error of injured person is he who caused the damage or helped to happened, the court pursuant to the provisions of its own law may exclude liability of the carrier or relieve his responsibility) (See article 21 of the **WaC** for air transport of 1929).

It should be noted the Hague Protocol of 1955 has been canceled the content of article 21 of the **WaC** and had replaced what is stated (if the carrier proves that the person who claims is the one who caused the events of damage or participated by his neglecting or fault or refraining, the carrier shall be exempt from this responsibility against the person in whole or in part by what was caused by the negligence or error or refrain from damage to the extent that he may have participated (See article (7) of the Hague Protocol of 1955) also ("Harvard Law Review", 2016).

It should be noted that it may not be allowed in any way to agree on the exemption from liability as stipulated by the **WaC** which stated (each condition is designed to exempt the carrier from responsibility or to set a minimum limit less than what is specified in the convention, shall be void) (See article 23 of the Warsaw Convention of 1929).

It should be noted that if the principle is to contraindicate conditions for exemption from liability or investigation, this nullity is not limited to conditions aimed at a direct path but extends also to go on each condition aimed indirectly to such an exemption or the investigation, which is achieved disdain for rights decided by the injured person in order to compensate what he caused (Al-Mutairi W., 2011).

It should be noted that it gets out of the scope of nullity due to the convention in the following cases:

1. The conditions that aim at renewing the **AC**'s responsibility.
2. Agreeing on exemption from responsibility or mitigating if this convention is reasonable and injury (See Article 33 of the Warsaw Convention of 1929).

Since the contract of carriage is considered of **CoC**s usually legislator intervenes to raise arbitrariness which cannot be raised by the applicant of carriage service otherwise he would be deprived from mobility and will not be arbitrary to these conditions except for the singing of the contract and before the damage because the time in which the traveler needs or shipper the carriage services either if these conditions put after the occurrence of the damage, there is no doubt the contractor with the carrier may reject (Dr. El-Arini M. F., 2002)also (Dr Gary N Heilbronn, 2016).

It should be noted here that if any person other than the traveler claim compensation for to the traveler because of his injury or his death, the carrier is also totally or partially exempt from responsible to the extent that it can prove the damage was caused by error or negligence or traveler omission or his participation in it (Wadle, Ryan David, 2005).

3.3 Results Arising from the Civic Responsibility of Air Carrier

The **WaC** of 1929 and its subsequent amendments established essential arrangements for substantive provisions for the responsibility of **AC**, and in order to keep the said arrangements, the convention touched on the procedural aspect of the responsibility of **AC**. **AC** may fail in implementing the imposed obligations that cause damage to the Contractor, there is no doubt that the latter will resort to the courts to require compensation for the received damage. So, it is not enough to only have substantive provisions organizing the responsibility of **AC**, but there should be procedural provisions that facilitate in proceeding litigation (Qwaider T. H., 2004) also ("Corporate Responsibility Report", 2004).
This chapter is divided into two requirements clarifying the way of taking legal action and its arising results against the **AC**;

3.3.1 Suing on the Air Carrier in Carrying Passengers.

Local and international legal systems have failed in organizing lawsuit on the **AC** who does not follow the imposed obligations as per the contract (**AC**), thus and to more shed light on the procedures of taking legal action (lawsuit) (Melhorn, Charles M, 1974), this section is divided into three sections as follows:

3.3.1.1 Lawsuit's Parties in Air Carrier Contract

It is known that lawsuit has two parties in the **AC**'s contract; the complainant who is always the passenger and the defendant the carrier. In order to have a clarified image about Lawsuit's parties in air carrier's contract, below is a brief about each one of them;

1. The Complainant in Air Carrier Contract

The complainant is the harmful one in **AC**'s contract which is different from one case to another, the complainant might be the passenger or one of his/her relatives in case of his death. If the harmful person is the passenger, he/she can bring suit against the carrier, but the question is; passenger's relatives can bring suit against the carrier or not in case of his/her death?

To respond to this question is that many of laws have clearly given this right to the heirs of the passenger, according to **WaC** for **ACg** in 1929, such cases are to be referred to the national law to determine the heirs of the deceased passenger. The complainant as per **WaC** is the one who received damage whether he/she was the passenger or the heirs or others (See article 24 of the Warsaw Convention of 1929).

Guatemala protocol says who has the right to bring a lawsuit as following;

1- No way to bring lawsuit in case of **CGs** unless it is conditional to this convention.
2- No way to bring lawsuit in case of carrying passenger and goods applied to the provision of this convention or because of illegalized contract or action unless it is conditional to this convention without selecting people who have the right to litigation, the limits of responsibility are the maximum ones that should not be passed whatsoever the circumstances are there (See article (9) of the Guatemala Protocol of 1971).

Then it is very clear that in case of carrying passengers, they have all the right to take legal actions whether he/she is passenger or his/her heirs or others (Jeffrey Beatty and Susan Samuelson, 2006).

2. The Defendant

It is the party that the lawsuit is brought against it (**AC**). It is possible that a lawsuit is brought against the heirs of the **AC** in case of his/her death. This could be derived from (if the defendant died, suit brought against heirs as per the convention) (See article 27 of the Warsaw Convention of 1929).

There are some cases with regard to defendant that should be indicated to as follows;

1- *Sequential Carriage*

WaC of **ACg** with regard to Sequential Carriage states that (the passenger should bring suit on that carrier that caused him damaged of the carrying stages, this is if the actual carrier does not have any relation to securing the carriage as per the contract with sequential carrier) (See paragraph (2 / Article 30) of the Warsaw Convention of 1929).

2- *Sequential Carrier and Actual Carrier*

WaC of **ACg** permits bringing suit on either whether it is the actual carrier or sequential carrier jointly or separately as the complainant chooses. If the lawsuit brought on one of the carriers, it can ask the other carrier to join it in the case (Al-Mutairi W., 2011).

3.3.1.2 Procedure for Bringing Lawsuit Against Air Carrier

As per **WaC** of **ACg**, the procedures of bringing suit in **ACgC** are as follows:

1. The complainant takes legal action in the region of one of the contractors where he can choose whether to be in the court of the carrier's region or the court where the carrier has contracted for the carriage mean in or in the court where the passenger arrives (Qwaider T. H., 2004) also ("Anolik Law Group: How to Sue an Airline", 2016).
2. Lawsuit procedures are submitted according to the regulations of the court where the lawsuit is brought on (See paragraph (1 / Article 28) of the Warsaw Convention of 1929).

Thus, we can identify from the text of the provision of this article that it is conditional for the complainant to bring suit in the court of countries which are parties in the **WaC**. This part of the article has much importance since it makes countries adhering to the agreed provisions of the convention (Dr. El-Arini M. F., 2002).

It is too clear from what had been stated above that the complainant is free to choose among three different legal departments for which he can bring suit against the defendant; the court of carrier's country, the court of the arrived to country and the court where the carrier has contracted for the carriage mean in. The question is, does **WaC** determines the type of court internationally or locally?

*Opinion went two directions answering this question (*Dr. Sultan A., 2001)*;*

1- Direction one states that the convention determines the specialized court only internationally.
2- The second direction of opinion states that the convention determines the specialized court internationally and locally.

It remains to say that cancelling the case against the **AC** had been dealt with in **WaC** saying;

1. The lawsuit is brought during two years as from the date of airplane's arrival to its destination or the day that the plane should arrive to or the date of carrier's stop of work and cancel the right of bringing suit on.
2. The law of dispute court determines the way of counting the mentioned duration (See paragraph 1\ article 29) of the Warsaw Convention of 1929).

That is why we can identify through the presented text that the duration of cancelling lawsuit in **AC**'s contract is two years as per the article 29 of the convention.

3.3.2 The Resulted Penalty of Implementing Air Carrier's Responsibility

As it is indicated to formerly, compensation is the resulted penalty of the caused damage to the passenger by the **AC**, the purpose of compensation is to minimize the caused damage by the carrier. Therefore, we will clarify the estimated compensation as per **InCs** with regard to **ACg** into two branches. The first branch will describe compensation according to **WaC**, while the second one will clarify it as per Guatemala protocol for 1971 as the following;

3.3.2.1 Compensation According to Warsaw Convention

WaC of 1929 states that the responsibility of **AC** is to provide the passenger with 125,000 French francs' gold. In the carriage of goods and recorded baggage, the carrier should provide 250.000 French francs' gold per kg (See paragraphs (1-2 / Article 22) of the Warsaw Convention of 1929).

As per Hague protocol, the compensation became 250,000 French francs' gold for each passenger and the same amount for goods and baggage related to the passenger during the flight (Al-Mutairi W., 2011).

In spite of increasing the amount of compensation in Hague protocol, still united stated is not satisfied with this amount for the American passengers. This led to having Montreal protocol in 1966 in which the amount of compensation for each passenger is increased to be 75,000 USD including all expenditure if the passenger died or harmed (Al-Mutairi W., 2011).

3.3.2.2 Compensation According to Guatemala Protocol 1971

This protocol has brought new rules that **AC** should adhere to it:

1- The ceiling of compensation amount is increased if happens the passenger physically harmed or died (Qwaider T. H., 2004).

2- Limits for lateness compensation had been Drew unlike former conventions.

3- The scope of responsibility is reduced for **AC** in carrying of passengers and their personal belongings, the maximum limit prescribed should not be exceeded even in the case of proven fraud or mistake by the carrier (Dr. Musa T. H., 2005) also ("Robert P. Boyle", 1973).

4- The **WaC** discussed the contacted responsibility for **AC**, this is much clear from the title of the Convention, attempts were continuous by complainants in order to circumvent this convention during their compensation claims resulted by negligence of the carrier (See Article (24/1) of the Guatemala Protocol).

Conclusion

Carriage is generally the lifeblood for the people of the whole world, by carrying people and goods, which means the link between the countries in the world, the progress of nations is measured by the extent of carriage progress, if this speak applies to all kinds of carriage in general, the **ACg** has a special privacy as it is characterized by speed, is described by internationalism and mired with a lot of risks, so it became the focus of attention by countries and international organizations to organize it which reduces the risks of resolving the problems of the laws conflict, since our study about this type of carriage is limited to the study of the **ACL** for a contract of carrying passengers and after the survey of this study through the chapters, topics, requirement and sections of this study, we have reached to a set of findings and recommendations we'll list as follows:

1. Findings:

a. While we were turning the sources related to the **ACg** on a journey to complete this thesis, it showed us that the contract of **ACg** like other contracts; such as **ACg** and sea contracts, it is the contract Hereby undertakes a party which is a carrier of the other party who is a traveler (passenger) to carry him to a certain place and mean during a specified period, but the **ACg** differs from both land and sea carriage in terms of the means used in carrying. In the **ACg**, the carriage should be by air and it must be by aircraft, by this mean, the **ACg** differs from the land's, which is by car or train or others like this, it also varies by a ship or a yacht or a steamship or others like this.

b. It showed us that the **ACgC** has a certain privacy and this privacy was a reason to ask many questions about the legal and natural of this contract, through extrapolation of the jurists' opinions. This contract has three major characteristics; it is described as a **CsC** which is based on the affirmative acceptance by both parties (the carrier and the passenger) which means that the **ACgC** meets with convergence of two wills, the will of the passenger with the will of the carrier, that's why this contract is described as consensual, in the other hand, it is described as **CoC** because the passenger cannot discuss the carrier's instructions and prices set for the carriage, but we see that this feature is like a subsequent feature because the as a principle the passenger has the absolute freedom in travelling by air or not, if he chooses to

travel, it is very natural that he is subject to the carrier instructions and he does not have the right to discuss details of the contract, on the other hand, it also shows us that the **ACgC** is a **CmC**, and this is also a natural because the main purpose carrying is to determine profit.

c. It showed us that the sources that regulate the **ACg** process are of two basic types: first, which is the initial basis, it is **InCs**, in this regard there are many **InCs** dealing with **ACg** operations with regulatory where we discussed in the body of the thesis, and along with the international regulation of **ACg**, which has been embodied by the **InCs**, there is an internal organization that emerges in the internal legislation of the countries, where there are many countries that have private domestic laws in organizing **ACg**, there are some states that organized **ACg** by commercial laws, such as Iraq.

d. We concluded that there was a set of reciprocal commitments secreted by **ACgC**, some of them are under the reliability of **ACg**, for example, the carrier's commitment to provide the traveler the travel ticket and the commitment of the passenger's safety, also there are obligations incurred by the passenger as his commitment to pay the fee and to respect the instructions issued to him by the carrier.

e. It also shows that there are several cases that indicate the **ACLDCPs**, the **ACg** is obliged to preserve the integrity of the passenger according to the **WaC** for **ACg**, this means that any default by the **AC** in this regard requires verification responsibility of an **AC**, besides what is mentioned above, the **AC** shall bear liability in the case of any delay in the carrying process, but it requires in this case that the delay does not cause by exceptional circumstances or deficient conditions beyond the capability of the **AC**, to carry liability in case of delay it requires the consequent damage, above all, there are many trends that call for the **ACL** on piracy acts.

f. We concluded that in addition to cases that achieve the **AC**'s liability, there are many cases lead to the removal of the **AC**'s liability and perhaps the most important case that denies the **ACL** is when it proves that the passenger is the one who causes of the damage that he inflicted.

g. We also found that there are a number of procedures that must be considered in the contract of **ACg**, including that the plaintiff files a complaint before a court located in the territory of a party state to the Convention that link them,

this condition or action looked with explicitly by **WaC** of **ACg** and therefore, proceedings will be subjected to the law of the court, which holds the case.

h. Finally, it showed us that the impact of the **AC**'s responsibility, embodies for compensation and the amount of compensation has been determined by a number of **InCs** and treaties related to **ACg**, for example, the **WaC** for **ACg** of 1929.

2. Recommendations:

After that we have included a set of conclusions that have been drawn from the substance of the thesis, we recommend some of the recommendations that we see worthy of consideration, namely: -

a. We recommend the international community to unite its dispersive efforts among a large number of **InCs**, and the need to unite them in a single convention, to ease the burden on states parties.

b. We also recommend the international community to adopt an **InC** that regulates **ACg** process in which the interests of all states are kept and give it a nature of legislation (legislation conventions) where all states shall adhere to them, whether they are parties or not.

c. We call on the national legislator in Iraq in particular to the need to adopt a law on the responsibility of the **AC** for damage caused to passengers whether this damage cause to them or to their goods where he uses the recent trends and **InCs** related to **ACg**.

d. I recommend that compensation includes physical, moral and psychological damage as well as physical damage and remove any unambiguous in this regard.

e. I recommend increasing the amount of compensation for the death at least not less than 500 thousand dollars, the carriers are to safe passengers' lives and the plane also by the assurance company which has the ability to pay such compensation.

f. I recommend to pay appropriate initial compensation in the event of an accident until finishing the lawsuit proceedings, and the injured should have choices either not to proceed with the lawsuit and the initial compensation

will be enough for him, or the choice of completion of the lawsuit to proceed, in order to spend them.

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