NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

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(LL.M)

MASTER'S THESIS

The International Air Carrier Liability

(An Analytical Study of Warsaw Convention 1929 and Montreal Convention 1999)

SHAUBO AZIZ

NICOSIA

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Prepared by

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ABSTRACT

This thesis looked at the civil liability of the international air carrier using a deep analytical study of Warsaw (1929) and Montreal (1999) Conventions and the various protocols on air carrier liability. The study examined the early development of the aviation industry and espouse on why the Warsaw Convention was seen as a great development that was aimed at safeguarding the interest of both the carrier and the passenger or cargo owner. The thesis also traced the modification of the Warsaw in the various protocols; Hague Protocol (1955), the Guadalajara Convention (1961), the Guatemala City Protocol (1971), and Montreal's Four Protocols (1975) as significant modernization that gave birth to a more modern provision on air travel regulations as seen in the Montreal Convention (1999). The thesis equally compared some provisions of the Warsaw Convention and the Montreal Convention with the view to establish what necessitated the change. An analytical view of the various conventions showed that the conventions have helped in safeguarding the interest of the air carriers and the passengers by establishing the necessary instruments and enabling laws and statutes that have reduced and mitigated likely problems that may crop up. This thesis also established that the onus of proof is on the carrier in the event of injuries sustained in an accident or death of the passenger, damage of goods and unreasonable delay that cause losses to the passenger. The thesis concluded that air carriers who habitually fail to live up to the civil liability with regarding laid down procedures should be proscribed from lifting passengers and cargo. Secondly, the thesis recommends that international air carriers who are found wanting should be tried in specially set up tribunals for speedy dispensation of justice. In conclusion, the thesis viewed air carrier liability as the business of both the carrier and the passenger.

KEYWORDS International Air transportation¸ International Air Aviation¸ liability of the international air carrier, international air transport Conventions, the Warsaw Convention 1929 and its subsequent amendments, the Montreal Convention 1999, International air carrier, airlines, aviation accidents, aviation incidents.

ÖZ

Bu tez, Varşova (1929) ve Montreal (1999) Sözleşmeleri ve hava taşımacılığı sorumluluğu üzerine çeşitli protokollerin derin bir analitik çalışması ile uluslararası havayolu şirketlerinin sivil sorumluluğunu incelemiştir. Bu çalışma havacılık endüstrisinin yakın zamandaki kalkınmasını irdelemiş ve Varşova Konvansiyonunun neden hem taşıyıcı hem de yolcu veya kargo sahibinin çıkarlarını korumayı amaçlayan büyük bir gelişme olarak görüldüğünü incelemiştir. Bu tezde ayrıca, Montreal Konvansiyonu'nda (1999) görülen hava yolu ile ilgili düzenlemelerde daha modern bir hüküm oluşturan önemli modernizasyon olarak Varşova'nın çeşitli protokollerdeki modifikasyonunu; Lahey Protokolü (1955), Guadalajara Sözleşmesi (1961), Guatemala Kent Protokolü (1971) ve Montreal'in Dört Protokolü'nü (1975) de incelenmiştir. Tez'de, Varşova ve Montreal Konvansiyonu'nun bazı hükümleri, değişikliğin gerekliliğini ortaya koymak amacıyla eşit derecede karşılaştırılmıştır. Çeşitli sözleşmelerin analitik bir bakış açısı, bu sözleşmelerin hava taşımacıları ve yolcuların çıkarlarının korunmasına yardımcı olduğunu ve yasa ve tüzüklerin sağlanmasının muhtemel sorunları azalttığını ortaya çıkarmıştır. Bu tez ayrıca, kazadan dolayı yolcunun yaralanması, hayatını kaybetmesi, mallarının hasar görmesi veya yolcuların zarar etmesine sebep olan gerekçesiz gecikmelerin ispat külfetinin taşıyıcı tarafından karşılanması gerektiğini ortaya koymuştur. Bu tez, sürekli bir şekilde prosedürlere ve sivil sorumluluğa uymayan hava yolu taşımacılığı şirketlerinin yolcu ve yük taşımasının yasaklanması gerektiği sonucuna ulaşmıştır. İkincil olarak, bu tez, yetersiz kalan uluslararası hava taşımacılığı şirketlerinin hızlı bir şekilde adalet karşısına çıkarılması için bu amaçla kurulmuş olan özel mahkemelerde yargılanması gerektiğinini savunmaktadır. Sonuç olarak, hem taşıyıcı hem de yolcu açısından hava taşımacılığı sorumluluğunu irdelemiştir.

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TABLE OF CONTANT

ABBREVIATIONS

A/C: Aircraft

Act: Activity

ARR: Arrival

Arsp: Airspace

ART: Article

AWB: Air Waybill

CAA: Civil Aviation Authority

CNEE: Consignee

COC: Contract of Carriage

Dly: Delay

IACO: International Civil Aviation Organization

IATA: International Air Transport Association

ICAA: Iraq Civil Aviation Act

IMF: International Monetary Fund

PAX: passenger

SDR: Special Drawing Right

USA: United States of America

P: page number

INTRODUCTION

Background of the Study

Air transport has become the fastest means of transporting passengers and cargo around the world in this era of globalisation. According to the Warsaw Convention (1922), it is the best and fastest way of connecting countries and continents as compared to other means of transport.[1] Because aircraft characterised by high speed, security, and safety. And This came about, especially, after the development of the aviation industry and the development of means of the A/C. The development of the air transport system of a country is almost synonymous with the level of economic development and growth of the country. And This means that the standard of development in the field of air transport in the country is a sign of progress and prosperity of the country. The economic growth of countries requires modern air transportation network consisting of airports, aircraft and air travel companies. Enrique (1976) believes that all air transport it requires the existence of good legislation and legislative framework that can keep pace with the development in the industry as well as to ensure its operation in line with international requirements.[2] Air transport is not only substantial to passengers alone but cargo, goods and luggage.

International Air Transport happens between many countries and regions, as such it requires the implementation of legislation that will cover all the countries that want to participate in international air transportation and provide the necessary protection for the passengers to engender customers' confidence. And This leads to a great need for a robust and multifarious legal system that will be required to be applying in the event of a dispute and conflict of laws created as a result of the international nature of the relationship. There is, therefore, a huge problem of law set up by the international air transport.

Therefore, it has become necessary to establish uniform legislative rules, agreed upon by all the states, to control air transportation, and in particular, determine the liability of an air carrier, and sets legal norms that are consistent with the air carrier liability characteristics. This effect will allow the various states that are involved in progressing

[1] Article 3, Paragraph 5, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw 1929).
[2] Enrique Mapelli Y Lopez, **Air Carrier's Liability in Cases of Delay**, *(*McGill Annals of Air and Space Law 1976), p. 11.

and improving in light of the operating legal rules this will also provide all the states with the legislative and economic protection to grow. At the same time, individuals and different countries that are benefiting from the air transport operation, are not overlooked, this way, the legal problems raised by the International Air Transport are resolved between the various parties to the agreement of the international air transport. Away from the legal rules contained in the domestic laws of individual nations, which were originally developed to be applied locally to the internal air transportation within the local legal framework.

The international community, therefore, began to harmonise some international treaties and agreements on the subject of global transportation. And This led to the Warsaw Convention of 1929, known as the Unification of Certain International Air Transport rules Convention, which was signed in the city of Warsaw (henceforth referred to as Warsaw Convention). Shawcross and Beaumont pointed out that Article 1(1) of the Warsaw Convention clearly states: "*Warsaw Convention 1929 applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking."*[3] The Warsaw Convention developed the first legal principles for a unified law to regulate international air transportation rules. The agreements reached the convention were, however, unable to keep up with all the developments in air transport. Because Warsaw Convention did not include all international air transport problems and the development of the aviation industry, so there was a need for a new agreement. And This led to Modification on the Warsaw Convention (henceforth referred to as the Hague Protocol) and subsequently brought about the 1955 Hague Protocol[4]. And This was followed by the Guadalajara Convention[5] 1961 and the Guatemala City Protocol[6] in 1971, and also the Montreal's Four Protocols[7], in 1975. There is no doubt that the considerations of justice require that the air carrier is

[3] Shawcross and Beaumont, **Air Law** [1002], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).
[4] The Hague Protocol: **Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air**, (The Hague, 29 September 1955).
[5]The Guadalajara Convention**: Convention Supplementary to the Warsaw Convention for the Unification of certain relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier**, (Guadalajara, 18 September 1961).
[6] The Guatemala City Protocol**: Protocol to Amend the Warsaw Convention**, (Guatemala City, 8th March 1971).
[7] The Montreal's Four Protocols**: Additional Protocol No 1, 2 [3], 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw**, (Montreal, 25th September, 1975).

liable for damages that occur during air transport operation, both for passengers and cargo owners. However, the blame on the airline without limits or control can lead to the air carrier inability to take full liability for the payment of compensation for the damage caused by air transport carrier. If eventually the carrier's investment is terminated, it could negatively affect the field of aviation, which could also adversely affect the national economy and the rights of individuals.

Aim of the Study

The issue of air carrier liability has several legal, scientific and practical aspects that need addressing, these important issues are:

1- To clarify the legal and practical problems facing the organisation. And unification of the rules of international air transport and related compensation for the damage caused by air transportation process. And it clarified the limits of civil liability of international air carrier through a stand on the issue of the legal status of the liability of the international air carrier in international conventions governing the airline.

2- To follow developments and modifications which kept pace with the unification and organisation of air transport rules, especially in the light that confirm the practical applications of existing reality.

3- To study the problems raised by the issue of determining the liability of an air carrier. And This leads states to continuous research aiming at finding appropriate solutions to the problems. Since this type of transportation is an international transport, the problems raised and the solutions developed are critical to all countries around the world.

4- Trying to spread awareness among the beneficiaries of air transportation services of passengers and cargo goods owners about access to their rights. Besides the existence of a mechanism to enable them to claim compensation for damage to their property in a manner that takes into account the interests of airlines on the one hand, and the interests of the customers on the other.

Research Problem

Based on the above, the issue of air transport and liability for air transportation raises many legal questions concerning the liability of an air carrier about the compensation it legally required to pay and aggrieve party. The reparations raise various legal inquiries that are both precise and complex and needs to be thoroughly investigated and studied.

The research problem revolves around two questions: -

First: - How are international air carrier's civic responsibilities organised based on international conventions?

Second: - What is the limit of compensation for damages resulting from the International Air Transport? And Branching off from this key question are the sub-questions:

The first question relates to the formation, proving, effects and properties of the international air transport agreement, and when is the air transportation considered internationally by international conventions? When is international air carrier liability achieved?

The second question relates to the procedures concerning the liability of the international air carrier, and the legal problems that appear during the application of the legal proceedings, regarding defences, lawsuits, liability and compensation, and other related lawsuits associated with them, and mitigation or exemption from liability.

Methodology

Tackling the research problems and answers to the research questions require the use of different approaches. These include an analytical method, descriptive method, comparative method and historical approach.

1. Analytical method: - For the purpose of analysis various legal texts, which came out of international conventions governing air transportation, to regulate air carrier liability, and to get to a deeper understanding of the new legal standards governing this liability.

2. Descriptive method: - for the purpose of describing and clarifying the various phenomena and cases concerning the agreement and liability of an air carrier, and the rules that can apply to it.

3. Comparative method: - the comparative method will be useful for the purpose of comparison between the various international conventions and protocols, and national legislation.

4. Historical method: - the historical approach will be helpful and use for the purpose of tracing the development and evolution of the air carrier's liability rules, and the consequences of it.

Limits of the Study

The subject of this study is the civil liability of the international air carrier, and how it is determined by the international air transportation rules by International Conventions. The International Conventions are the Warsaw Convention 1929, The Hague Protocol 1955, the Guadalajara Convention in 1961, the Guatemala City Protocol in 1971, the Four Montreal's Protocol in 1975 and the Montreal Convention in 1999.

So the internal air transport is outside the scope of this study because the internal air transport organised by domestic national legislation. The study, however, depends on the jurisprudence and the judicial precedents of the various countries. The study, therefore, focuses on the specifics of the provisions of the international air transport on the compensation for damages arising out of international air transportation. This study also focuses on international air transportation rules on compensation for damages resulting from international air transportation.

Also, the criminal liability of an international air carrier is out of the scope of this study, Because of the civil liability system based on compensation without punishing the perpetrator. Shawcross and Beaumont observed that criminal liability related to air navigation organised by the public air law, such as the Tokyo Convention of 1963, which refers to offences and acts committed on board the plane.[8] The Hague Convention of 1970 looks at the Suppression of Unlawful Seizure of Aircraft while

[8] Shawcross and Beaumont, **Air Law** [1002], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

the Montreal Protocol of 1971 addresses the Suppression of Unlawful Acts against the Safety of Civil Aviation.[9]

The Previous Studies

The liability of international air carriers has been an issue of great concern to many legal minds. This liability has assumed multiple dimensions giving rise to uncountable litigations. These litigations have equally exposed the ambiguous nature of air carriers. The Warsaw and Montreal Conventions have both tried to address the issue of air carriers' responsibilities.[10] The fundamental liability of air carriers is that of conveying their passengers and cargos from one destination to the other. The failures of air carriers to effective do this (for example Dly), can lead to different forms of litigations.

Szakal[11] observed that the term 'delay' is highly ambiguous and can come about as a result of the fact that;

"*Air travel is heavily affected by the meteorological conditions which can result in the closing of an airport to air traffic or diversion of a flight to an alternative airport with improved weather conditions. Other important causes can be attributed to equipment failure, which normally results in an overhaul or a check-up, air traffic congestion as well as correction of defects in the administrative process of flight"*[12].

According to that instituting, a claim for damage as a result of delay is a tricky issue. Because of previous cases e.g. *Jean-Baptiste V Air Inter*[13] and *Panalpina International Transport Ltd V Denzel Underwear Ltd*[14] shows that damages only awarded when there is a proof of willfulness on the part of the carrier to delay a passenger or cargo.

In the *Jean-Baptiste case V Air Inter*, the court found that all the causes of delay listed by the airline were sufficiently satisfied. As such, the carrier was not responsible for the delay and should not pay damages as being claimed by the passenger. In the case of the *Panalpina International Transport Ltd V Denzel Underwear Ltd*, the court found that there was an unreasonable delay on the part of the carrier which led to losses in

[9] Farooq Ahmad Zahir, **Commercial Aviation Law, Air Law**, (Arab Renaissance House for Publishing, Cairo, 2005), p. 14.
[10] Enrique Mapelli Y Lopez, **Air Carrier's Liability in Cases of Delay,** *(*McGill Annals of Air and Space Law 1976), p. 7.
[11] Arpad Szakal, **Air Carriers Liability in Cases of Delay,** (nd), p. 2.
[12] Ibid, p. 3.
[13] [1990] 44. RFDA 219.
[14] [1981] 1 Lloyd's Rep 187 (QBD).

trade of the passenger. The court thus ruled that the carrier was liable and should cover the losses of the passenger.

The Warsaw Convention was the first meaningful step taken to bring various countries together in an attempt to ease the problems associated with air transportation. The resolutions adopted at the convention were later amended by the Hague Protocol and subsequently modified at the Montreal Convention. Article 19 of the conventions as amended deal precisely with carrier's liability occasioned by delay, not due to any breach on the part of the carrier[15]. This provision insulates carriers against litigations on delays that are sufficiently proven to be beyond the control of the carriers. It must point out that both the Warsaw and Montreal Conventions have been found to place the burden of proof on the carrier[16].

[15] Shawcross and Beaumont, **Air Law VII** [1002], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

[16] Article 38, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air**, (Montreal, 28th May, 1999).

CHAPTER ONE: THE INTERNATIONAL AIR TRANSPORATION SYSTEM

1.1 THE INTERNATIONAL AIR TRANSPORT AGREEMENTS

1.1.1. The Definition & Characteristics of International Air Transport Agreements

The International Air Transport Agreement and Properties refers to the restrictive regulations and body of laws of international air transport on the parties that have brought into an agreement. Legally, an agreement is defined by The General Principle of Law (2006, p. 115) as "*an agreement which is legally binding on the parties to it and which if broken may be enforced by action in court against the party that has broken it*"[17]. The International Air Transport agreement and properties, therefore, is the body of laws that have been enacted and evolved at the various conventions (Warsaw and Montreal Conventions) to safeguard both parties and to ensure fairness were an agreement voided.

1.1.1.1. The Definition of International Air Transport Agreement

Warsaw Convention 1929 and the Montreal Convention 1999 did not put any special rules for the composition of the air transport agreement or even a defined, for this reason, the rules of national law applicable used for this purpose[18]. The Manual on the Regulation of International Air Transport states that *"conditions of carriage means the requirements established by an air carrier in respect of its carriage, which is referred to as 'conditions of agreement' when shown on the passenger ticket or air waybill. The various benefits and limitations set out in the conditions of carriage /agreement along with the price for the services being provided constitute an 'agreement for carriage' between the air carrier and the user"*[19]. The harmonisation of international air travelling conditions was further achieved by the International Air Transport Association (IATA) by compelling all international air carriers to adopt Resolution

[17] **General Principles of Law** [2006], p. 115.
[18] Elias Haddad**, Air Law,** (the University of Damascus for Publishing**,** Syria, 2005), p. 139.
[19] **ICAO Manual on the Regulation of International Air Transport, (**2004), p. 17.

724 on their passenger's tickets. The resolution ensures that the customer duly informed of the conditions and limitations of the travelling agreement he has entered.

1.1.1.2. The Characteristics of International Air Transport Agreement

The agreement of air transportation does not require a written agreement to be valid. The formation of international air transport agreement only needs to be approved by the parties, and this applies to the agreement on the transfer of people and goods and does not require writing the agreement, or ticket delivery, or delivery of the goods to become an agreement binding on the parties[20]. Article 3, paragraph 2 of Warsaw Convention 1929, Hague Protocol 1955, and Article 3, paragraph 5 of Montreal Convention 1999[21] confirmed that The absence of a ticket or airway bill of goods should not affect the existence or the validity of the transportation agreement, which shall be subject to the rules of the Convention.

The ticket and the airway bill are means of proving the agreement. Article 11 of the Montreal Convention states that these documents are evidence to prove the agreement and the terms of the agreement unless it can be proven to the contrary, the absence of this documents or lack of validity or loss of it does not affect the validity and the existence of the agreement[22].

The International Air Transport agreement considered as adhesion agreements because the air transport agreement provides a necessary service to the public, and this service is monopolised by the air transport company, a legal monopoly. The airlines impose standardised terms to the public with no discussion in the conditions imposed[23].

Considering the International Air Transport agreement as adhesion agreements lead to authorising the judge the power to amend the arbitrary conditions or exempt the weak Party according to the requirements of justice. And the interpretation of doubts for the

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[20] Abdul-Fadil Mohamed Ahmed, **The Private Air Law,** (Arab Renaissance House for Publishing, Cairo, 2007), p. 204.

[21] Article 3, Paragraph 5, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 28th May, 1999).

[22] Issa Ghassan Rabadi, **The Responsibility of the International Air Carrier on the Damage Caused to the People and their Luggage, a Comparative Study,** (the House of Culture for Publishing and Distribution, Amman, 2008), p. 53.

[23] Ahmed Ibrahim al-Sheikh, **The Liability for the International Air Transport Damages Compensation , According to the Warsaw Convention 1929 and Montreal in 1999**, (the Arab Renaissance House for Publishing, Cairo, 2008), p. 115.

benefit of the debtor, And inadmissibility of interpretation of incomprehensible phrases in a way that may Cause damages to the weak party[24].

the air carrier gets a fare in advance, before the implementation of air transport, and the fare are predetermined, there is no negotiation because the air transport agreement is an adhesion agreement, where the airline determine the amount of the fare and imposed on all the customers[25]

The International Air Transport agreements are considered as a commercial project for the air carrier because they aim to make a profit, whether the carrier is an individual or a legal entity. The state or public legal entities or any of its institutions may manage air transport Act. Nevertheless, the air transport will remain a commercial business for an air carrier, and subject to the provisions of the commercial rationing[26].

Air Transport agreement is a commercial agreement for a dealer unless proven otherwise as the travelling for the purpose of tourism, While Air Transport agreement is a civilian agreement for non-merchant unless proven otherwise as the travelling for the purpose of concluding a business deal.

The IATA Considered that the air transportation agreements is a personal agreement in the paragraphs 2 of Article 3 of the General Conditions of IATA about the Carriage of Passengers. Meaning it does not entitle the person that made an agreement with the carrier to waive his or her ticket, the ticket is only used by the person named in the ticket[27].

The general conditions of IATA require the ticket to be bound by name, stating the name of the traveller, and the passenger cannot waive the ticket without the consent of the carrier, because of the security requirements, passports and customs procedures that require the preparation and delivery of lists by PAX names.

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[24] Omar Fuad Omar, Mahmoud Mokhtar Prairie, **Air Law**, (the Arab Renaissance House for Publishing, Cairo, 2007), p. 85.

[25] Mustafa Al-banndari**, Summarised in Air Law,** (Arab Renaissance House for Publishing, Cairo, 2000), p. 377.

[26] Samiha Qeliob, **Air Law**, (The Arab Renaissance House for Publishing, Cairo), p. 182.

[27] In this regard, the case (Ross and Pan Am), where Pan Am company refused to transfer a passenger had a ticket does not bear his name, but bearing the name of another passenger named Ross, for more details about this case, see: Georgette miller: "liability in international air transport"; **the Warsaw system in municipal courts,** (kluwer _ Devener _ Netherlands, New York, 1977), p. 14.

The Hague Protocol 1955 enter an amendment to the airway bill as a result of the possibility of entering the sender in paragraph 3 of Article 15 of the Warsaw Convention making the airway bill tradable, it means the airway bill may be traded by delivery or endorsement[28].

1.1.2. The Parties and Documents of International Air Transport Agreement

The parties that held by the International Air Transport agreement are the carrier and the PAX in the case of a person travelling. In the case of cargo transportation, the parties held are the carrier, the consignor and the CNEE. These parties legally bound by the provisions of the air travel agreement enclosed in the ticket and the airway bill which stipulate the limitations of both sides regarding the travelling agreement as well as rights to claims for damages in the case of a Dly, loss and cargo damages[29].

1.1.2.1. Parties of International Air Transport agreement

The Warsaw Convention (1929) and the Montreal Convention (1999)[30] have established that the parties that identified by the international Air Transport Agreement are the air carrier and the service recipient of the airline.

Air Carrier

According to the ICAO Manual on the Regulation of International Air Transport (2004), *"an air carrier is an enterprise that engages in the provision of transportation services by aircraft for remuneration or hires*".[31] Therefore, the air carrier is required by law to have a valid license to fly and transport passengers, goods and cargo from one destination to the other[32]. Due to the international nature of air travel, carriers are required to comply with internationally accepted standards as ratified by the International Civil Aviation Organization (ICAO). The airline is also expected to be

[28] Hani Mohammed Hamed Dewidar, **Commercial Aviation Law**, (The New University House for Publishing, Alexandria, 2002), p. 164.
[29] Article 3, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 28th May, 1999).
[30]Article 7, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 28th May, 1999).
[31] **ICAO Manual on the Regulation of International Air Transport, (**2004), p. 17.
[32] Shawcross and Beaumont, **Air Law** VII [1002], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

of precise and particular capacity based on existing regulations and the capacity allocated to the carrier which is supervised by national governments[33].

If the transport company that signed the agreement with the passenger or the Consignor is the same company that Implement the transport process, there is no difficulty in determining the obligations of the liability of an air carrier, but the difficulty lies in the case of Successive transfer and the actual carrier.[34]

Successive transportation is transport carried out by some different successive carriers. in accordance with Article 36, paragraph 1, of the Montreal Convention 1999, each carrier accept passengers or luggage or goods subject to the rules prescribed in this Convention and considered as a party to the agreement of carriage so far as the agreement deals with that part of the transport process, which took place under its supervision.

In the case of combined carriage in which part of the carriage implement by air and the other part implement by another mode of the carriage. The Montreal Convention subjected the part that performed by air to the paragraph 4 of article 18 of this Convention according to paragraph 1, article 38 when the conditions sets in article 1, exist in the part that implements by air.

The actual carrier is a carrier which implements the transfer process, and there is another carrier made an agreement with the passenger or the Consignor, Guadalajara 1961 Convention came to face this situation, which has spread widely[35].

With regard to the actual carrier, Article 39 of the Montreal Convention 1999 states "The provisions of this Chapter apply when a person (hereinafter referred to as "the agreement carrier") as a principal makes an agreement of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the agreement carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the

[33] **ICAO Manual on the Regulation of International Air Transport, (**2004), p. 19.
[34] **The International Comparative Legal Guide to Aviation Law, (**Global Legal Group 2016), p. 5.
[35] Omar Fuad Omar, Mahmoud Mokhtar Prairie, **Air Law**, (The Arab Renaissance House for Publishing, Cairo, 2007), p. 135.

meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary".

Service Recipient

The service recipient in international air transport is the passenger or the cargo owner who enters into an agreement with an air carrier or the CNEE. The traveler is the first and primary party in the international air transportation agreement for persons, without the traveler this agreement does not exist and The carrier cannot complete the transfer process, identifying the traveler does not raise any difficulty, whether national or foreign, because the traveler nationality have no effect, the traveler's identity is defined accuracy, where it is stated passenger name clearly on the ticket and check it out when boarding and ensure the match of the name contained in the ticket with the name in the passport[36].

The Passengers Rights as captured in the Warsaw Convention entitles the passengers to secure protection against adverse actions of carriers or airports that may violate the rights of the passenger[37]. The service recipient is protected by the Warsaw and Montreal Conventions by way of stipulated compensation in the case of death, loss or damage of cargo[38]. The Air carrier is bound to deliver the goods in the ARR place to the person who appointed by the sender knows as CNEE, and a consignee is entitled to sue the air carrier in case of loss, damage or Dly in the transfer[39]

1.1.2.2. Documents of International Air Transport Agreement and the Role of Documents

The carrier and passengers in an international transport are obligated by the paper that is establishing their agreement of transportation by clearly spelling their roles, duties and obligation to one another.[40] The primary and most important document in this regard is the airway bill and the tickets. The airway bill or cargo receipts apply to cargo

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[36] Mohamed Bahgat Abdullah Amin Kaid**, Summarized in Air Law,** (Arab Renaissance House for Publishing, Cairo, Second Edition, 2006-2007), p. 102-103.
[37] Article 5, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[38]Bartsch, I.C. Ronald. **International Aviation Law: A Practical Guide**, (https://books.google.com.ng/books?isbn//), p. 18.
[39] Muhammad Fahmi Al-Gohary**, Commercial Law and Commercial Contracts,** (The Egyptian National Library for Publishing, 2003), p. 289.
[40]Bartsch, I.C. Ronald. **International Aviation Law: A Practical Guide**, (https://books.google.com.ng/books?isbn//), p. 36.

transport or goods while the tickets use as the person's document and proof of agreement[41]. The Warsaw Convention of 1929 and subsequent protocols and the 1999 Montreal Convention requires that the air transport documents are evidence of air transport and its terms and conditions agreement[42].

Personal Documents

Person's documents refer to the ticket that a passenger given by the carrier. Article 3 paragraphs 1 of the Essential Documents on International Air Carrier Liability, 1.9 Montreal Convention identified certain requirements that such a document must fulfil to include "an indication of the places of departure and destination"[43]. The safety of the passenger's baggage ensured by giving the person a baggage identification tag for his or her checked baggage. The passenger also informed of the limits of the carrier's liability in the case of death, injury, damage, loss or Dly of transport[44].

Goods Documents

The goods document of an international air transport regarding the carriage of cargo is crucial in many respects. The airway bill (referred to in the Warsaw Convention as 'air consignment note') is a significant document that sets in clear terms the extent of carrier's liability to the passenger[45]. This paper is very crucial importance and is expected by law to include all the provisions agreed by all the members of International Air Transport Association (IATA)[46]. Alternatively, all the AITA member states have agreed to the printing of *conditions of agreement* which should cover even conditions not covered by International air travel conventions, but which must not conflict with the provisions of the Warsaw and Montreal Conventions. The airway bill as a cargo document serves the important purpose of evidence in the case of a dispute. Both the Warsaw and Montreal Conventions acknowledged that *"the airway bill is a prima facie evidence of the following: the conclusion of the agreement of carriage and conditions of carriage, the of the goods (or acceptance of the cargo) by the carrier*

[41] Article 15, Paragraph 8, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 28th May, 1999).
[42] Aziz Ugaili**, Allosat in Explaining the Trade Legislation**, (The House of Culture Publishing, Oman, 2008), p. 127.
[43] Article 3, Paragraphs 1, **IATA Essential Documents on International Air Carrier Liability**, (2004).
[44] Ibid.
[45] United Nations Conference on Trade and Development**, Carriage of goods by Air: A Guide to International Legal Framework,** (2006), p. 22.
[46] Ibid.

and the statements as to the weight, dimensions, packing of the cargo and number of packages and state quantity and condition of the cargo"[47]. All these provisions usually come handy in the case of disputes because they serve as valid evidence[48].

1.1.3. The Parties Obligation's in the International Air Transport Agreement

The International Air Transport Agreement is obligated to protect the rights and privileges of the passenger as well as safeguard the air carrier from exploitation by the passenger regarding certain forms of damages that are deemed not to be as a result of any deliberate practice of the airline. In other words, Jose (2009) believes that *"agreement obligations are those duties that each party is legally responsible for in an agreement "*[49] Both the Warsaw and Montreal Conventions agree that between the carrier and the PAX, there is an agreement that must be fulfilled and failure on either side can lead to ligation. The conventions have placed the burden of proof on the air carrier in the event of a disputed damage or loss in the course of the transportation and a 21 days limit within which to file a suit on the part of the passenger[50]. The Montreal Convention's Essential Documents on International Air Carrier Liability, Chapter 1.9[51], provides all the necessary instruments regarding the extent of compensation that a claimant can make. Raffaele (2008) explained that these tools would cater for issues of Dly, loss of goods or cargo, damage of goods and in the case of accidents, deaths or injuries of the passengers.[52] These provisions have been of great benefit to the aviation industry because they have helped it reducing rancour in the industry and also saving time during adjudication between disputing parties. The transporting persons are obligated by the agreement that they have entered. The carrier is bound to transport a PAX or cargo from one point to the other, and the traveller is equally obligated to conform to the conditions required of him by the agreement as fully as possible[53].

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[47] United Nations Conference on Trade and Development**, Carriage of goods by Air: A Guide to International Legal Framework,** (2006), p. 23.
[48] Art 5, **IATA Essential Documents on International Air Carrier Liability,** (2004), p. 62.
[49]Jose Rivera, **Air Transportation Contrac**t, (www.legalmatch.com 2009).
[50] Article 7, Paragraph 4, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[51] Bartsch, I.C. Ronald. **International Aviation Law: A Practical Guide**, (https://books.google.com.ng/books?isbn//), p. 121.
[52] Steven Raffaele, Air Law Symposium, **Hurry Up and Wait: Air Carrier Liability for Flight Delays,** (New York, 2008), p. 17.
[53] Shawcross and Beaumont, **Air Law VII** [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

The agreement for the transportation of merchandise or cargo is expected to fulfil certain requirements. The goods on an A/C refer cargo other than human passengers. The Warsaw and Montreal Conventions provide for the condition under which such a cargo would transport[54]. Art. 18 of the Instruments Relating to Liability for Carriage by Air stated that "*The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air".*[55]

1.1.3.1. Carrier's Obligations

The obligation of a carrier depends on the kind of business the carrier is engaging in. The Warsaw and Montreal Conventions and the various protocols as amended have placed particular obligations on the airline. Shawcross and Beaumont defined obligation as "an act that you must do because of law, rule or promise"[56]. The carrier has the duty fulfilling all the requirements of the agreement entered with the passenger, cargo owner or their representative. Point 9 of the IATA conditions of carriage states clearly one of the obligations of the carrier as "*Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch"*[57]. The carrier is also obligated to deliver the luggage or cargo of a passenger, cargo owner or their representative in a good state within a reasonable time. The Warsaw Convention clearly states that a carrier is liable for damage or delay of the passenger by air transport[58]. Scholars like Shawcross and Beaumont [59] believe that the term 'delay' means the failure of the carrier to successfully deliver on its part of the agreement. The two conventions also obligated the carrier to pay compensation to the PAX in the case of the loss of luggage or cargo. The carrier also has the obligation of duly informing the passenger in the case of delayed flights as well as ensuring the safety of all on board the aircraft.

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[54] Article 15, Paragraph 8, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[55] Article 18, **IATA Essential Documents on International Air Carrier Liability,** (2004).
[56] Shawcross and Beaumont, **Air Law VII** [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).
[57] Article 9, **IATA Essential Documents on International Air Carrier Liability,** (2004).
[58] Bartsch, I.C. Ronald. **International Aviation Law: A Practical Guide**, (https://books.google.com.ng/books?isbn//), p. 127.
[59] Shawcross and Beaumont: **Air Law VII** [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

1.1.3.2. Passenger's Obligations

The passenger in an international air carrier bound by the 'the condition of carriage' agreement issued by the carrier. The traveller must have valid travelling documents and certified receipts for the journey that he is embarking on. Such are a passenger obligated to be of good conduct aboard an aircraft. No passenger is expected to be disruptive or unruly. The terms 'disruptive and unruly passengers in the Manual on the Regulation of International Air Transport (2004), refer to "*passengers who fail to respect the rules of conduct on board aircraft or to follow the instructions of crew members and thereby disturb the good order and discipline on board aircraft".*[60] Again, all passengers are obligated to be properly documented. They should be honest regarding all the information that they give especially about their destinations, their titles and reasons for their travel. The traveller is expected to use proper travelling documents to travel. The travelling is obligated to submit his/herself as well his/her luggage for checks by the relevant authorities. In the application of the provisions of Article 13 of the 1944 Chicago Convention Relating to the state sovereignty over its Arsp, the passenger should respect all control regulations and procedures of the customs inspection and health, And all the documents that is required to complete the flight in passenger's possession[61].

1.1.3.3. Sender and Consignee Obligations

The cargo owner who enters into an agreement with an air carrier called as the sender, and Air carrier is bound to deliver the goods in the ARR place to the person who appointed by the sender knows as consignee, and a consignee is entitled to sue the air carrier in case of loss, damage or delay in the transfer[62].

Article 10 of the Montreal Convention places certain obligations on the sender or consignee of a good. Paragraph 1 states that "*The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion*

[60] ICAO **Manual on the Regulation of International Air Transport**, (2004), p. 120.
[61] Radwan Abu Zeid, **Commercial Aviation Law,** (the Arab Thought house for Publishing, Cairo, 1980), p. 317.
[62] Muhammad Fahmi Al-Gohary**, Commercial Law and Commercial Contracts,** (the Egyptian National Library for Publishing, 2003), p, 289.

the cargo receipt or for insertion In the record preserved by the other means referred to in paragraph 2 of Article 4"[63]. Paragraph 2 of the Article states the implication that the consignee is liable for any damage that the carrier may incur as a result of any wrong documentation by the sender or consignor[64]. Thus the sender or the consignee shall indemnify the carrier if his wrong documentation causes any damage to the carrier. The documentation should do in a way that it complies with customs and police requirements.

1.2. The International Regulation of International Air Transportation

1.2.1. The Historical Development of Air Carrier Liability

The historical development of air carrier liability can be traced to many years before the Warsaw Convention of 1929. Before the Warsaw Convention, air carriers operated independently and dealt with issues of compensations resulting from lost or damage of passenger's luggage or cargo as the laws of their operating states stipulate[65]. Most air carriers relied on admiralty laws that were primarily concerned with see transportation. Diedericks (2011) observed that the speed of air transport, its international nature and growth of the air transport industry made the admiralty laws of ship transport inadequate to cater for the ever expanding challenge of the air transport industry[66]. As a result industry practitioners felt the need to unify certain laws and rules governing international air transport owing to the international nature of the transportation. It gave birth to the Convention for the Unification of Certain Rules Related to International Carriage by Air [67] that was signed in Warsaw, 1929. The Convention aimed at establishing decorum in the system by safeguarding the rights and privileges of the customer as well as protecting the interest of the industry practitioners. The convention tried to set limits on the liability of the air carrier in the event of loss of goods, damage and death of the PAX or injury suffered on board a carrier.

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[63] Article 5, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 28th May, 1999).
[64] Ibid.
[65] Farooq Ahmad Zahir, **Commercial Aviation Law, Air Law,** (Arab Renaissance House for Publishing, Cairo, 2005), p. 56.
[66] Diederiks-Verschoor I.H.Ph, **Introduction to Air Law,** (9th Edition**), (**Wolters Kluwer 2012), p. 38.
[67] Farooq Ahmad Zahir, **Commercial Aviation Law, Air Law,** (Arab Renaissance House for Publishing, Cairo, 2005), p. 57.

1.2.1.1. The Regulation of the Air Carrier Liability According to the Warsaw Convention 1929 and Its Amendments Subsequent Protocols

The need to regulate air carrier liability in the Warsaw Convention of 1929 and its subsequent amendments stems from the essential twin needs of protecting the customer and also protecting the airline. Report 65: Tabled 7 December 2004(3) and February 2005 pointed out that *"Under the Warsaw system, an international carrier is liable for the death or injury of a passenger caused by an event that occurs on board the carrier's aircraft or in the course of embarking or disembarking. The carrier is also liable for damage to cargo and registered baggage caused by an occurrence on their aircraft during international carriage"*[68]. The passenger in the Warsaw Convention is expected to prove that the carrier was negligent and the carrier should prove it was not negligent in the case of a disputed claim. The carrier can also be exonerating if it can show that it took measures to avert the damage or that the damage that occurred was beyond its control.

The Basis for the Air Carrier Liability According to the Warsaw Convention 1929

The basis of the air carrier liability in the Warsaw Convention was to the fact that the convention was coming at the infancy or early days of international air transportation. As such, the liability that the Convention places on the carrier with regards to liability was merely corrective to avoid future occurrence without discouraging the airline from doing business. It believed that the capping of the air carrier liability at that time (1929) was suitable for that period but not for the much-evolved air transport industry of today as it is grossly inadequate. The basis of the carrier liability also aimed at getting carriers responsible for their deeds or that of their representatives.

The conventions primary purpose or basis is to ensure the smooth transition of passengers and goods from one state to another. The convention thus tried to harmonise all the laws that will ensure the equitable compensation of travellers in a way that their goods or luggage that lost or damaged restored to a large extent.[69]

[68] Report 65, Chapter 5.
[69] Demsay, Paul Stephen **European Aviation Law** Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 41.

Before the Warsaw Convention, the courts applied the general rules in domestic laws on conflicts that were occurring, so there was a need to unite the international air transport laws, as a result, the Warsaw Convention 1929 was held and it was only in French.

The Convention Included forty-one articles divided into five chapters, the first chapter: defines the scope of application of the Convention, Chapter II: transport documents, the third chapter: the liability of an air carrier, Chapter IV: the verdicts of joint transportation operations. Chapter V: Final Provisions related to the ratification join, revoked and modified of the Convention.

Iraqi legislation stipulates in Article 170 of the Civil Aviation Act of 1977 to implement the provisions of the Convention and its subsequent amendments on the air transport of passenger, goods and cargoes even in cases of transport internally[70].

The nature of the liability in the internal laws affected the preparations for the Warsaw Convention 1929, so the Convention did not take a specific system for the liability, and tried to work a balance between the interests of the air carrier on one hand by not throwing a big liability on airlines, and thus encourage aviation development, while protecting the interests of customers from the arbitrariness of the carriers in another hand.

The liability system in the Warsaw Convention was applicable to both of contractual liability suit and tort liability suit.

Air carrier liability in the Warsaw Convention based on the putative fault and the carrier obligation was exercised due diligence, took into account the interests of passengers and sender; they were not obliged to establish proof of carrier fault[71].

The Warsaw Convention Allowed the air carrier if it wants to get rid of the liability to prove that the damage caused to the traveler or goods, resulted from a foreign cause, And they have taken all necessary precautions to prevent the damage or to prove that the damage due to the traveler himself or the goods itself, and the Convention also determined the compensation amount by a certain amount.

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[70] Article 170, **Iraqi Civil Aviation Act of 1977**.

[71] Ahmed Ibrahim al-Sheikh, **The Liability for the International Air Transport Damages Compensation, According to the Warsaw Convention 1929 and Montreal in 1999**, (The Arab Renaissance House for Publishing, Cairo, 2008), p. 22.

The Convention cancelled all the conditions that aim to exempt the carrier from liability, and the conditions under which aims to put a limit of compensation less than the limit established by the Convention, to prevent the carrier from the evasion of liability[72].

The Basis of the International Air Carriers Liability According to the Amendments Subsequent Protocols for the Warsaw Convention

Despite the significant achievements of the Warsaw Convention (the harmonisation of certain rules that related to international carriage by air), it did not meet the fast emerging challenges of the fast growing air transport industry. This first protocol that was held to improve on the Warsaw Convention was the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, which took place at The Hague on the 29 September 1955. It was followed shortly by the Convention Supplementary to the Warsaw Convention for the Unification of Certain relating to International Carriage by Air Performed by a Person Other than the contracting Carrier, which signed at Guadalajara on the 18 September 1961. In the same vein, the Protocol to Amend the Warsaw Convention, which held in Guatemala City on the 8th of March 1971. It also aimed at addressing certain lapses observed in the Warsaw Convention.

The Warsaw Convention was not able to keep pace with progress in the field of aviation for that have been modified in accordance with the Hague Protocol 1955, which kept the air carrier liability as a contractual liability, but shifted the burden of proof to the carrier, and Doubled the maximum compensation in Article 22, and applied the provisions of the Convention on the air carrier servants and agent[73].

The United States refused the accession to the Hague Protocol, because the Protocol served air carrier interest, where the basis of liability remained based on a putative fault, and the Protocol allowed the air carrier to put Condition to exempt itself from liability if the damage or loss of goods is due to the nature of the goods or inherent defect in the goods in Article 12, and the Mitigation of penalty for the damages caused

[72] Article 23, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw 1929).

[73] Ahmed Ibrahim al-Sheikh, **The Liability for the International Air Transport Damages Compensation, According to the Warsaw Convention 1929 and Montreal in 1999**, (The Arab Renaissance House for Publishing, Cairo, 2008), p. 34.

by mala Fides air carrier by depriving the carrier of the maximum compensation set by the Convention. The protocol allowed the carrier to exempt itself from liability by proving that it take necessary measures to prevent the damage, and the protocol did not provide protection for the passengers except for raising the maximum compensation that is the carrier adherence[74].

In 1961 the Guadalajara protocol was held to regulate the status of a particular case, which was implementing the whole or part of transport agreement by another carrier, other than the carrier that made the agreement with passenger, called the actual carrier, who is not a party to the agreement of carriage between the passenger or the sender and the first carrier, the protocol applied the liability system of Warsaw Convention 1929 and the Hague 1955 on both of the actual carrier and the first carrier.

For the purpose of avoiding the bad consequences may cause by withdrawal of the USA from the Hague Protocol, both IATA and IACO convince a number of airlines in several countries to sign an agreement with the USA Civil Aviation Authority and achieve what they aim to, which was raising the maximum amount of compensation, for this reason, the Montreal Convention 1966 was signed[75].

The provisions of the Montreal Convention in 1966 made the liability of the carrier objective liability, based on the idea of risk. The carrier is responsible for the damage, whether it was its fault or not, as long as the carrier benefiting from the Air transport as an economic Act, meaning that the air carrier is absolutely committed to compensating the damage to the traveler or goods, and it cannot evade liability unless by proving that the damage was due to the traveler himself or goods itself or self-defect in goods.[76] The Convention raised the maximum compensation to $ 75,000 American Dollar to be reduced to 58,000 US dollars if the litigation expenses paid in the country where the lawsuit filed, the maximum compensation increased seven times than the limit set by the Warsaw Convention 1929[77].

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[74] Issa Ghassan Rabadi, **the Liability of the International Air Carrier on the Damage Caused to the People and their Luggage, A Comparative Study**, (the House of Culture for Publishing and Distribution, Amman, 2008), p. 84.

[75] Jalal Wafa Mohammadayn, **Tighten the Air Carrier's Liability for Damages Occurring for Travelers: A Study in the American Justice,** (The New University House for Publishing, Alexandria, 1995), p. 13.

[76] Demsay, Paul Stephen **European Aviation Law** Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 56.

[77] Mohamed Farid Al-Arini, **Air Law: Air transport, Aviation Accidents**, (The New University House for Publishing, Alexandria, 2007), p, 196.

The purpose of this agreement was to protect the USA citizens so the agreement terms in order to be applied are that air transport must be internationally according to the Warsaw Convention 1929, and one of the Air takeoff point or Air landing point must be in the United States of America.

The discrimination in applying the 1966 protocol only for the USA citizens led to a breach of the equality principle between the parties because it led to prejudice of the sovereignty of States Parties to the Warsaw Convention in 1929. As a result, the Guatemala City Protocol was held in 1971.

The bases of the air carrier liability in Guatemala City Protocol is objective liability with regard to the damage caused to the traveler and luggage, while its a contractual liability with regard to the damage caused to the goods, and which is due to delay, and raised the maximum amount of the compensation up to 100,000 US dollars.

The Air Transport of goods evolved dramatically in the seventies, so it was necessary to amend the system of liability in the case of goods transport, for the purpose of protecting the Consignor and facilitate air cargo operations, therefore the Montreal Convention of 1975, made the liability of the air carrier for damage caused to goods an objective liability, where the Protocol stipulated in Article 4, on the carrier's liability for damage to goods as a result of destruction, damage or loss of goods, without being able to get rid of the liability, Unless it proves that the cause of the damage is due to one of the following reasons[78]:

1-The nature of the goods or inherent defect in the goods.

2-Defect in the packaging of the goods, packaging being done by someone else other than the carrier or one of the carrier's servants and agents.

3-Acts of war or armed conflict.

4-Acts of public authority during the entry or exit of goods or during the presence of the goods in transit.

[78] Issa Ghassan Rabadi**, The Liability of the International Air Carrier on the Damage Caused to the People and their Luggage, A Comparative Study**, (The House of Culture for Publishing and Distribution, Amman, 2008), p. 89.

Despite all these conventions, the air transport rules did not unite, because of all states didn't join to all the conventions, so Air transport in each country apply the rules of the Convention, which the country joined to it.[79]

Additionally, to strengthen the instruments of the Warsaw Convention, there were Additional Protocol No 1, 2 [3], 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw. Held in the city of Montreal on the 25th September 1975. Finally, the instruments relating to air carrier liability in the Warsaw Convention and the Hague Protocol were also strengthened in the Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol, in the city of Montreal on the 4th of May, 1966. All of these protocols and agreement were aimed at improving the liability system in the Warsaw Convention and bring it up to speed with the existing reality such that passengers are compensated for their loss or damages as adequately as possible.

1.2.1.2. The Regulation of the Air Carrier Liability According to the Montreal Convention 1999

Chapter 3, Article 17 of the Montreal Convention[80] sets the liability system for international air carrier and regulates it to check unwarranted exploitation of it by customers. Paragraph 1 of the article sets the tone for the liability system. It states that *"The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking"*[81].

Compared with the first paragraph of Article 17, The subsequent paragraphs shed more light on the carrier's liability and state the various conditions under which the carrier is not liable.

The second sentence of Paragraph 2 of Article 17 states that: *"However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality*

[79] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//, 2011), p. 18.
[80] Article 10, Paragraph 6, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[81] Ibid.

or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents."[82] The provision of Article 17 to a large extent has established the boundary for both the carrier and the passenger regarding the issue of liability in the event of a dispute arising from death, injury, loss or damage of baggage.

Finally, the Montreal Convention also sets a limit to which compensation can be paid or drawn. In the case of death, the Special Drawing Rights sets the limit at $100,000 while for damage caused by delay as envisaged in Article 19; the Special Drawing Right is $1450 and for damage, loss, destruction or delay the Special Drawing Right is $1000 for each passenger. But for the destruction, loss or damage of cargo, the Special Drawing Right sets the limit at $17 per kilogramme[83].

The Preparation for the Montreal Convention 1999

The preparation for the Montreal Convention of 1999 started many years with the various protocols and agreements that amended some of the provisions of the Warsaw Conventions. In preparing for the Montreal Convention, There is also the recognition that the Warsaw Convention has brought order in the air transport industry, but that particular provisions are obsolete and needed to be modernised to be useful in the present day. Secondly, the preparation reaffirmed the desire of the industry participants to have an orderly developing industry with the conviction on the part of all member states that there is a strong desire to harmonise certain rules relating to international air carriage[84]. It found in the proviso to the various articles embodied in the Montreal Convention.

The Liability System of the Air Carrier According to the Montreal Convention 1999

The responsible system according to the Montreal Convention 1999, requires that the air carrier and its servants and agents assume Joint liability to ensure the safe ARR of passengers and goods. The Montreal Convention also improved the protection of the

[82] Article 9, Paragraph 3, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[83] Ibid.
[84] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//, 2011), p. 18.

interests of the carrier, passenger and consignor. It also sets the limits of liability about compensation as well as claims and counterclaims. The Convention places the liability of proper documentation on the part of the passenger and in the case of a consignor, the appropriate labelling of all the goods and cargo in compliance with the requirements of custom and police duties. On the carrier, it places the liability of fulfilling its terms of the agreement by transporting a passenger or cargo by the provisions of the agreement entered. The failure of the carrier or the passenger to carry out their laid down liability and which result in any form of damages the instruments of the Convention make them liable at varying degrees.[85]

For the purpose of avoiding the effects of the multiplicity of rules that govern international air transport, the Montreal Convention was signed in 1999, for the Unification of certain international air transport rules.

Montreal Convention 1999 regarded as the new international treaty to replace the Warsaw Convention 1929 because it coordinates between the Warsaw Convention and its amended subsequent protocols.

This Convention issued in six languages: English, French, Spanish, Russian, Arabic and Chinese, in the case of emergence of a misunderstanding or conflict it refers to Article 33 of the Vienna Convention of 1969 on the Law of Treaties.

According to Article 55 of the Montreal Convention, which gives the priority of application to the new Convention, and sets that this new agreement will replace the Warsaw Convention 1929 and its amended subsequent protocols in stages.

Montreal Convention 1999 distinguished between the air carrier's liability basis in case of damages caused to passengers, cargo and baggage, but unified the air carrier's liability basis in case of delay, whatever the type of transportation, as follows::

1- Air carrier liability in the case of passenger transport based on the putative Fault Unable to Prove the contrary, and cannot get rid of the liability by proving the foreign reason, if the value of the damage did not exceed a certain amount, which its 100,000 units by SDR.

[85] Demsay, Paul Stephen: **European Aviation Law** Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004**),** p. 90.

2- The air carrier liability in the case of transfer registered baggage based on the putative Fault Unable to Prove contrary, whatever the amount of compensation was, as long as the damage occurred on board the A/C or during the period which the luggage was under the supervision of the carrier.

   The carrier's liability In the case of unregistered baggage, based on the putative Fault able to prove contrary, any things that are kept by the passenger and his / her personal requirements, the carrier will be responsible for it if the damage caused by the carrier fault or by the fault of one of the carrier servants or agents[86].

3- The basis of the air carrier's liability in case of goods transfer based on the putative Fault Unable to Prove contrary, where the carrier is liable for the goods damage in case the damage occurs during transport or during the period that the goods were under the supervision of the carrier, and the carrier can get rid of the liability if it can prove that the cause of the damage is due to a defect in the goods or the lack in the goods, or bad packaging of goods by another party other than the carrier or its servants or agents.

4- The carrier's liability in case of delay based on the putative Fault able to Prove contrary, the carrier is not liable if it proves that they took all necessary measures to avoid the damage or it was impossible for them to take such measures, and the passenger or consignor have to prove the carrier fault or the damage caused, in this case, the Convention adopted the rules of contractual liability.

The Montreal Convention also stipulates the provisions relating to Exemption from liability and the provisions relating to the amount of compensation.[87]

2.2.2. The Subjected and Non-subjected Air Transportation to the International Conventions

The Convention and its provisions are restricted to international air transportation done by countries that have signed and domesticated the provisions of the conventions, as such all carriers that engage in international air carriage are subjected to the

[86] Article 17, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).

[87] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//, 2011), p. 118.

international air carriage conventions. Article 1 Chapter 1 of the Montreal Convention reads: *"This Convention applies to all international &age of persons, - baggage or cargo perform by aircraft for reward. It applies equally to gratuitous carriage by air performed by an air transport undertaking*"[88]. This means that even states who are signatories to the convention are bound by it for the air transportation of persons, goods and cargo within the state and outside the states. However, states that are not signatories to the Warsaw and Montreal Conventions are not parties to the provisions of the conventions.

1.2.2.1. Subjected Air Transportation to the Warsaw Convention and Montreal Convention

As stated in Article 1 Chapter 1 of the Montreal Conventions which is in tandem with the Warsaw Convention, the transportation of a person or cargo must be by paid transportation and for the purpose of profit making. Secondly, the transportation must be by an international aeroplane[89]. Thirdly, the transportation of persons or Cargo must be by carriers that are parties to the conventions. The carriers that are engaged in international air transport or carriage are expected to be members of ICAO and IATA, and other statutory bodies are involved in air transport regulation[90].

Paid Transportation Agreement

This provision requires paid transportation agreement because of the significance of having an agreement document that is valid. Shawcross and Beaumont pointed out that agreement documents such as the airway bill and passengers' tickets usually come handy during litigation[91]. If the international air transport is not by a paid transport agreement, then such transportation does not fall within the purview of the Warsaw and Montreal Conventions. It seems right to suggest that the Warsaw and Montreal Conventions are concerned with establishing decorum in air transport agreement to solve problems of litigation.

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[88] Article 18, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[89] Ibid.
[90] ICAO **Manual on the Regulation of International Air Transport,** (2004).
[91] Shawcross and Beaumont, **Air Law** VII [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

Transportation by International Plane

There is a distinction between the domestic plane and international plane. A domestic plane is a plane that flies only within territories that are located locally in their countries.[92] The Warsaw and Montreal Conventions in Article 1 contend that the term *"international carriage"*[93] means the carriage of persons or goods between two states that are parties to the conventions. The plane must register for the purpose of international air transport, and it must certify as being in perfect specification and condition as an international aircraft by the provisions of ICAO and AITA.[94]

1.2.2.2. Non-Subject Air Transportation to the Warsaw Convention and Montreal Convention

The paragraph 2 of Article 2 lays out the non-subject to the Warsaw and Montreal Conventions. The paragraph 3 of Article 2 states that *"Except, as provided in paragraph 2 of this Article, the provisions of his Convention, shall not apply to the carriage of postal items"*[95]. The paragraph 2 provides that individual mail owners are not covered by the provisions of the conventions. The provisions make the carriers liable to only the postal administrations base on the rules that covers the relationship between postal administrators and carriers. This I think is done to streamline the possibility of multiple litigations.

Secondly, the non-subject air transportation to the Warsaw Convention and the Montreal Convention are countries or states who are to sign up to the conventions and as such cannot domesticate it in their countries. These countries can also decide to participate in air transportation. Countries that have signed up to the conventions agree with the liability limits set by conventions regarding the issues of loss, damage or death.

Finally, the carriers that not covered by the provisions of the conventions are those that used for demonstrative purposes and those use for investment purposes. Because such

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[92] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//, 2011), p. 18.
[93] Article 10, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[94] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2010), p. 98.
[95] Ibid.

airlines or carriers are not in the business of the transportation of passengers and cargo of individuals and, they may not register as corporate entities for the purpose of air transportation[96].

Air Transport Being Undertaken by the State Itself and Mail Transfer

The air transport that is undertaken by the state and mail transfer not directly covered by the Warsaw and Montreal Conventions. Article 2 Paragraph, 2 of the Montreal Convention, provides that the carrier is only liable to the mail administrators and not to the individual owner of the mail. If the state is involved in air transportation for its states function, the Warsaw and Montreal Conventions also do not cover the liabilities of such states. However, if the state involved as a public entity, the provisions of the Warsaw and Montreal Conventions adequate covers it. Article 2 paragraph 1 clearly states that: *"This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article I.*"[97] The liability provision of the conventions covers for the transportation of passengers and cargo as paid transportation and the purpose of profit making.[98]

The Demo International Air Transportation and the Transportation for Investment

Demo international air transportation is equally not covered in the provisions of the Warsaw and Montreal Conventions. By their nature, a demonstrative carrier is not fully in operation and cannot be bound an agreement as stipulated in Article 1 of the Montreal Convention.

[96] Shawcross and Beaumont, **Air Law VII** [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).
[97] Article 19, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[98] Ibid.

CHAPTER TWO: THE EMERGENCE OF THE INTERNATIONAL AIR CARRIER LIABILITY

2.1. The Air Carrier Liability for the Passengers and Goods Transportation

The air carrier liability for the passengers and goods transportation came about as a result of the concerted effort of both the carrier organisations and other international air transport organisations that are concerned with the welfare of passengers and their goods. The moment a customer enters into an agreement with an air carrier, the airline saddled with certain responsibilities regarding safe delivery of the passengers and goods or cargo. The Warsaw and Montreal Conventions[99] stipulate in Article 17, 18 and 19 that the carrier is liable to in the case of passengers' death or injury, damage or destruction of the cargo of travellers if such death or injury, damage or destruction occurred on board the A/C. However, Article 20 of the Montreal Convention deals with the important issue of exoneration of the carrier to liabilities arising from the possibilities above. These shall address in the subsequent sections.[100]

2.1.1. The Air Carrier Liability for the Passenger's Death or Injury

The carrier is deemed to be responsible for the safety of every passenger on board an A/C. Article 17 Paragraph of the Montreal convention holds that *"The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking" (*Montreal Convention, 1999). This implies that the air carrier is directly responsible for the passengers' safety from the point of embarking, on board the aircraft and during disembarking. If the passenger suffers any bodily injury or death at any of this point, then the burden of proof falls on the air carrier to establish why the carrier should not be held responsible for the injury or death of the passenger. The extent of compensation in any of the mentioned possibilities is as established by the statutory international organisations. This is done primarily to avoid the exploitation of the passengers by the

[99] Article 19, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).

[100] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2010), p. 106.

carrier and to also shield the carrier from unnecessary litigation that could ruin them from doing business.

2.1.2. The Air Carrier Liability for the Damage of Goods and Passengers' Luggage

The airline is equally responsible for the safety of all checked in luggage of the passengers on board. Paragraph 2 of Article 18 of the Warsaw and Montreal Convention[101] hold the carrier is liable for the loss or damage of all checked in luggage. The paragraph in part reads thus: *"The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which mud the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier"* (Montreal Convention 1999)[102]. The second part of the paragraph outlines the conditions upon which the air carrier shall not be liable to any of such damage or loss. The provision of this paragraph places enormous liability on the shoulders of the airline as it requires and demands that the airline should care for the safety and condition of the luggage in its care.

2.2. The Air Carrier Liability for Delay in Transportation

Delay in air transportation can be caused by many factors. This delay may trigger quite a number of damages to the passenger that could lead to litigation. Szakal, (n.d)[103] identified the various causes of delay in air transport to include; Meteorological factors that relate to unfavourable weather conditions that could hamper safety of flight, the mechanical fault of the craft and equipment, traffic congestions among many others are factors that could lead to a delay in air transportation. The Warsaw and Montreal Conventions state that the carrier is liable for any such delays that are unwarranted. The first sentence of Article 19 of the Montreal Convention states that:

[101] Article 19, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[102] Ibid.
[103] Szakal Arpad, **Air Carrier's Liability in Cases of Delay,** *(*n.d. Leiden), p. 15.

"*The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo."*[104] The same Article 19 accounts for when a carrier can be adjudged to be free of such liabilities.

2.2.1. The Nature of the Damage Caused by Delay

Although all the conventions do not give a clear and precise definition of the meaning of delay, the principle guiding the operation of Article 19 is to compensate the passenger for the loss or damage that he may incur as a result of the occurrence of a delay. If a damage result from delay is adjudged to be the failure of the air carrier to perform the duty that agreement with the passenger, then the carrier is said to be liable. Apparently, the nature of damage varies from case to case. The damage resulting from delay might lead damage of the luggage of the passenger, bodily injuries on the passenger and loss of business time and appointments. However, if the air carrier is adjudged to have done everything necessary to avoid delay or the delay is deemed to be beyond the control of carrier then the carrier can put up a defence against any liability. Raffaele (2008), cited the case between Obuzor v. Sabena Belgium Airways, 1999 WL 223162 (S.D.N.Y. Apr. 16, 1999), over 200 passengers experienced a delay of their flights from New York to Lagos, Nigeria via Brussels as a result of fog. The passengers were delayed for 5 days but were fed and accommodated by the air carrier. The court ruled that the carrier is absolved of its liability because they have done absolutely every necessary thing to avoid the delay.[105]

2.2.2. The Time Period for the Delay

Time is a very important factor in today's world. The Warsaw and Montreal Conventions[106] do not specify the time period for the delay would make the carrier liable or not. However, it noteworthy that time is a very relative item. Time loss to a business appointment can only be judged on the value of what has been missed.[107] The carrier is equally allowed the opportunity of fulfilling the Agreement of Carriage it

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[104] Article 19, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[105] Steven Raffaele, **Hurry Up and Wait: Air Carrier Liability for Flight Delays**. SMU Air Law Symposium (February 21-22, 2008), p. 7-8.
[106] Demsay, Paul Stephen: **European Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p.19.
[107] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//, 2011), p. 128.

entered by providing alternative transport means to the passenger within a reasonable time. The time period for the delay must be such that the carrier completely fails to deliver on its obligation to transport a passenger. The time period for the delay is, therefore, the period that of embarking and disembarking from the plane at the agreed destination.

2.3. The Air Carrier Liability in case of Aircraft Kidnapping (Air Terror)

Air terror has posed a serious problem to international flights. Series of highjack by terrorist especially of international flights have brought to the fore the issue of air carrier liability as contained in the Warsaw and Montreal Conventions. Wilensky (1987: 250) observed that the replacement of Article 25 of the Warsaw Convention by Article 13 of the Hague Protocol with a clear definition of 'willful misconduct' aimed at placing the liability for safety on the air carrier[108]. The airline is assumed to be liable for any event of air terror except it can proof beyond reasonable doubt that the air terror attack was not as a result of their negligent or misconduct. It is important to note that because the burden of proof has been shifted from the passenger to the air carrier by the Warsaw Convention, the airline is expected to have evidence that it secured the plane adequately against any form of terrorist attack. The liability system of the Warsaw Convention has criticised for being too low particularly when the carrier is viewed to have been excessively careless and wantonly negligent leading to the terror attack in question[109].

2.3.1. The Nature of the Accident which is the Liability of An Air Carrier

The nature of the accident of an aeroplane determines whether it is the liability of the air carrier. Article 17 of the Warsaw and Montreal Conventions states that:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any bodily injury suffered by a passenger if the accident which caused the damage so sustained took on board the aircraft or in the course of any

[108] Robert Wilensky **Flying the Unfriendly Skies: The Liability of Airlines under the Warsaw Convention for Injuries Due to Terrorism**. (Northwestern Journal of International Law & Business (8) 1987), p. 17.
[109] Robert Wilensky **Flying the Unfriendly Skies: The Liability of Airlines under the Warsaw Convention for Injuries Due to Terrorism**. (Northwestern Journal of International Law & Business (8) 1987), p. 18.

operations of embarking or disembarking.[110] This means that once the accident occurs on the board, the carrier is liable whether it is a terror attack or a plane crash, as a result, certain reasons, and the carrier must proof it was not willfully negligent. The carrier is, therefore, liable to pay compensation to the passenger if the accident is a result of willful and wanton negligence according to the provision of both the Warsaw and Montreal Conventions[111].

2.3.1.1. The Distinction between the Accident and the Incident in Air Transport

Establish what constitute an accident and an incident has been very contentious. An incident is a sudden occurrence of an unpleasant event while an accident is a viewed as aa sudden unpleasant event that is not planned which can result in bodily injury or death of a passenger.[112] The lack of precise distinction makes the differentiation of an accident from an incident very tricky as both can have life-threatening implications. Following recent judgments, Wilensky (1987) believes that certain incidents on the plan such as highjack or kidnapping have come to be viewed as accidents.[113]

2.3.1.2. Definition of Air Accident

An accident is an unforeseen unpleasant occurrence that may result in bodily injury, damage to goods or death of a passenger. The Convention on International Civil Aviation of 1944 Annex 13 defines an accident as "*an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such persons disembarked"*[114] (p. 10). When such an event occurs, death or bodily injuries can be sustained by the passengers, the aircraft can damage or completely destroyed or written off. The definition of an accident includes occurrence "*associated with the operation of an aircraft which affects or could affect safety of operation*" (p. 10)[115].

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[110] Article 19, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[111] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//, 2011), p. 18.
[112] Shawcross and Beaumont, **Air Law** VII [1002], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).
[113] Robert Wilensky **Flying the Unfriendly Skies: The Liability of Airlines under the Warsaw Convention for Injuries Due to Terrorism**. (Northwestern Journal of International Law & Business (8) 1987), p. 18.
[114] Annex 13, **The Chicago Convention on International Civil Aviation,** (Chicago, 1944).
[115] Article 20, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).

2.3.2. The Legal Standards for Considering Terrorist Accident as an Air Carrier Liability

It is usually a tricky situation when trying to determine what constitutes an accident and what is the liability or liability of the air carrier. If the terrorist act on the plan considered as an accident, then legally it is the liability of the carrier to pay liability. The legal standard is still Article 17 of the Warsaw Convention[116]. The carrier assumed liable in the event of an accident except it can proof otherwise. However, with the expansion of the meaning of an accident to include A/C highjack and kidnapping, the passenger has been given some form of cover against accidental occurrence that may affect his safety.[117] Must judicial adjudication have concluded that both high jacking and terror attacks on the plane fall with the legal definition of the term 'accident' as used in the Warsaw Convention[118] Once the court can establish that the incident falls within the definition of an accident and falls within the ambit that the air carrier is liable then the airline must take liability.

[116] Article 17, Paragraph 3, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[117] Giemulla, Maria Elma & Weber Ludwig, **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn// 2011), p. 201.
[118] Ibid, p. 202.

CHAPTER THREE: THE BASIS OF THE INTERNATIONAL AIR CARRIER LIABILITY DEFENSE AND THE EXEMPTION FROM LIABILITY ACCORDING TO THE WARSAW CONVENTION 1929 AND MONTREAL CONVENTION 1999

Both the Warsaw Convention of 1929 and the Montreal Convention of 1999 obligate the air carrier to take liability for damages suffered by the passenger. However, the conventions demand the carriers show course why it should exempt from such liability. Article 1 of the Warsaw and Montreal Conventions clearly state the scope of the application of the established rules of the convention. Its application is on every international air carriers who are parties to the convention. Other bodies too like the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO) also provide some framework of regulation within which air carrier responsibilities, as well as their exemption from responsibilities, are enshrined. It must point out that these bodies draw legitimacy from the Warsaw and Montreal Conventions. As already stated, the burden of proof of non-culpability is on the carrier and not on the passenger or client.

3.1. The Basis of the International Air Carrier Liability Defense According to the Warsaw Convention 1929 and the Montreal Convention 1999

The defence basis for the air carrier liability can be drawn from Article 20 of the Warsaw and Montreal Conventions[119]. A paragraph of 1 of Article 20 of the Montreal Convention unequivocally states that: *"the carrier is not liable if he proofs that he or his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures"* (Art 20, Warsaw Convention)[120]. This particular provision provides the background upon which the carrier can put up its defence.[121] Secondly, Article 34 of the Warsaw Convention also gives the airline

[119] Article 34, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[120] Article 34, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).
[121] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 221.

the right to make its regulations so long as they do not conflict or contradict the provisions of the Convention[122] (Article 34).

3.1.1. The Basis of the International Air Carrier Liability Defense According to the Warsaw Convention 1929

The defence basis of international air carrier Liability according to the Warsaw Convention of 1929 premised on the provision of the Convention which primarily requires the airline to proof that it is not culpable. The provisions of the Warsaw Convention are the primary bases for the defence of the liability of the international air carrier. Article 17, 18, 19 and 20 of the Warsaw Convention are the statutory instruments within which the carrier can operate to establish its innocence. Raffaele (2008) pointed out that: *"Courts had found that airlines are afforded a defence to liability when they have taken all necessary/reasonable measures to avoid the damage or when the delay was caused by the contributory negligence of the passenger"* (p. 9).[123] Therefore, the expected angle of defence for the air carrier against liabilities which the Warsaw Convention places on the carrier is to proof that all necessary measures were take to avert damage of goods. It is important for the carrier to know the condition of the goods that they are about they carry before they sign any Agreement of Carriage with the passenger or cargo. Liability suits can only dismiss if the carrier can proof that it has diligently performed its duty or duties.

3.1.1.1. Taking the Necessary Procedures and the Navigational Fault

Taking the necessary procedures does not foreclose on the damages and destruction of presenters' goods. Navigation faults can occur which may result in the damage or the destruction of the goods of the passenger. Raffaele (2008) observed that the Article 20 of the Warsaw Convention is very clear regarding the taking of the necessary procedures. The condition of haven taken *"necessary measure"*[124] can set a career free from liabilities. All "necessary measures" have been interpreted severally to mean

[122] Giemulla, Maria Elma & Weber Ludwig **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn// 2011), p. 118.
[123] Steven Raffaele, **Hurry Up and Wait: Air Carrier Liability for Flight Delays**. SMU Air Law Symposium, (February 21-22, 2008), p. 13.
[124] Article 34, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1929).

even those actions that could not be taken by the carrier because they were impossible for the carrier to take.[125]

3.1.1.2. External Factors

External factors have been interpreted to mean the unforeseen reasons that are external to the standard security procedures that are laid down to ensure safety. Air carrier accidents and delays can result from natural weather conditions such as fog, snow and thunderstorms that could lead to travel delays or air traffic accidents. When such happens, the air carrier must proof beyond reasonable doubts that it took every "necessary measures" to avert the occurrence of the delay or accident. Raffaele (2008) pointed out that the carrier must carrier out its obligation as contained in the Agreement of Carriage agreement.[126] Mapelli (1976) also highlighted the fact that sometimes delays and accidents that lead to damages are simply beyond the capacity of the carrier. Meteorological changes, airport congestions, delays occasioned by a connecting flight, air terror and a host of others are difficult to forecast or anticipate.[127]

3.1.2. The Basis of the International Air Carrier Liability Defense According to the Montreal Convention 1999

The defence basis of international air carrier liability according to the Montreal Convention of 1999 tries to improve on the defence means of international air carrier liability of the Warsaw Convention. Article 19 of the Montreal Convention provides that basis for the legal defence means of international air carriers.

3.1.2.1. Passenger Injury or Death

The Warsaw and Montreal Conventions were conceived to ameliorate the losses that can be incurred by passengers as a result of certain accidents that could lead to bodily injuries or death of the passenger. Article 17 of both the Warsaw and Montreal Convention clearly state that the carrier is liable in the case of death or bodily injury sustained as a result of an accident that occurs when a passenger is aboard the aircraft

[125] Steven Raffaele, **Hurry Up and Wait: Air Carrier Liability for Flight Delays**. SMU Air Law Symposium, (February 21-22, 2008), p. 14.
[126] Ibid.
[127] Enrique Mapelli Y Lopez, **Air Carrier's Liability in Cases of Delay**, *(*McGill Annals of Air and Space Law 1976), p. 112.

"in the course of any operation of embarking or disembarking."[128] This provision is similar to that of the Montreal Convention as they both hold the air carrier liable for the death or injury of the passenger. The Warsaw and Montreal Conventions were designed to provide some form of indemnity to the losses suffered by passengers in a way that it will not adversely affect the business of the carrier. As a result, a stipulated amount for the death of the passenger approved, and the nature of the injury sustained by a passenger determines the limit of the compensation.[129]

3.1.2.2. Delays in Transportation of Goods and Luggage

A carrier undertakes a carriage of goods and luggage of a client after the signing of appropriate documents. The Agreement of Carriage usually states the conduction of transport and the consequences for the failure of the carrier to deliver as promised. The transportation of the goods and luggage may encounter delays which in turn can cause certain losses to the client[130]. Article 19 of the Montreal Convention clearly states that: *"The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo"* [131]. Some of the damages occasioned by delays are difficult to ascertain their extent. The Warsaw and Montreal Conventions, Article 22 have therefore established the limits of 4150 Special Drawing Rights by the passengers[132]. While in the case of loss, damage or destruction of luggage occasioned by delay the limit is 1000d or the equivalent of the worth of the luggage in sum. it is done to kerb the unnecessary claims that could be brought forward by passengers as well as to compel the carrier to pay reasonable compensation for the damages that the delay has caused[133].

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[128] Demsay, Paul Stephen **European Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 212.
[129] Enrique Mapelli Y Lopez, **Air Carrier's Liability in Cases of Delay**, *(*McGill Annals of Air and Space Law, 1976), p. 110.
[130] [130] P.P.C. Haanappel: **The Law and Policy of Air Space and Outer Space: A Comparative Approach,** The Hague: *Kluwer* Law International, 2003, p. 38.
[131] Article 35, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[132] Ibid.
[133] Giemulla, Elma & Ronald Schmid (ed.) **Montreal Convention Commentary,** The Hague, Kluwer Law International, 2006, (analyses of the liability of delay p. 2 - Art. 19)

3.2. The Exemption from Air Carrier Liability and the Guarantees to Cover Air Carrier Liability According to the Warsaw Convention 1929 and the Montreal Convention 1999

The second sentence of Article 19 is a proviso that creates the possibility for the carrier to exempted from any liability. The article reads in part: *"Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures".*[134] It means that if a carrier can establish that the damage to luggage or cargo is not as a result of their negligence, then the court can exempt them from any liability. Shawcross pointed out that at common law, a carrier is not liable for any delay that is not a breach of its duty[135]. however, depends on the ability of the carrier to proof its case.

3.2.1. Exemption from the Air Carrier Liability

The exemption of an airline from liability or the right of a carrier to exoneration from liability captured in Article 20 of the Warsaw and Montreal Conventions. The first sentence of Article 20 reads in part: *"If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage."*[136] The provisions of this Article aimed at making both the carrier and the passenger responsible and alive to their duties and liability.it also aimed at being fair to both parties during disputes and litigations.

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[134] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 230.
[135] Shawcross and Beaumont, **Air Law VII** [1002], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).
[136] Article 34, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).

3.2.1.1. The Evolution from the Principle of Air Carrier Liability to Exemption from Liability

Article 20 of the Montreal Convention among other things states the principle behind the principle of exonerating a carrier from liability[137]. As mentioned earlier, the carrier liability principle aimed at providing the passenger with the appropriate compensation in the event of damage or destruction of goods or the injury or the death of a passenger. Arpad Szakal (p. 8) observe that in international air travel, the purchase of a ticket with the indication of travelling times on the ticket is a valid agreement of carriage which must execute.[138] The rights of the passenger to transported engraved in the agreement. Initially, this places liability on the carrier to execute the agreement. However, several cases have shown and proven that the failure of a agreement to be fully executed is sometimes not due to the carrier but the passenger or client. In the interest of justice, the carriers exempted from liability to particular liabilities of damages that caused by the negligence of the passenger or his agent.

3.2.1.2. The Principle of the Exemption Conditions Invalidity

The principle of the exemption conditions invalidity as observed by Arpad Szapal is that certain national laws tend to conflict with the position of the conventions regarding responsibilities. Arpad Szakal (2007) pointed out that "The basis of the `Warsaw carriage` is a relationship agreement between the passenger and the carrier" (P. 9).[139] Article 26 of the Montreal Convention reads*: "Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention".*[140]

The conditions of invalidating the liability of the carrier should be written on the documents such as the airway bill, tickets and other relevant documents. Steven Raffaele (2008) also observed that *"courts have held that claims arising from complete nonperformance of the COC are not preempted by the Montreal Convention or*

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[137] Giemulla, Maria Elma & Weber Ludwig **International and EU Aviation Law: Selected Issues, (**https://books.google.com.ng/books?isbn//2011), p. 119.
[138] Szakal Arpad, **Air Carrier's Liability in Cases of Delay,** *(*n.d. Leiden), p. 14.
[139] Ibid.
[140] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 234.

Warsaw Convention" (p. 7).[141] It is clearly shown that there are enough grounds for the invalidation of certain claims especial those that not preempted by the Warsaw and Montreal Conventions. However, this is subject to determination by the courts regarding what interpretation is to given.

3.2.2. The Guarantees to Cover Air Carrier Liability

The IATA and ICAO are statutory bodies that help in enforcing international air travel regulations and safety. The Warsaw and Montreal Conventions Article 50 requires the carrier to covered. Article 50 of the Montreal Convention reads: *"States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party in which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention".* It is enforced to safeguard losses on the part of the passengers and the carriers. Maintaining adequate insurance is paramount because it offers guarantees that losses covered to the extent that compensations can pay quickly. These guarantees can engender confidence to both the passenger and the air carriers because there is certainty that indemnities will granted in the case of a mishap.

3.2.2.1. Guarantees to those Affected

Insurance coverage offers guarantees over the loss of life, luggage or injury to the passenger. The guarantees are provided to air passenger and air cargo. The plane itself is expected to be fully insured and covered. The cover in aviation insurance aimed at providing the needed protection against the risk associated with the aviation industry. The Warsaw Convention regarded as the first meaningful and vigorous step taken to institutionalise insurance guarantees within the legal framework of the aviation industry. Shawcross and Beaumont (2009) believe that providing guarantees to passengers by the carrier is important in establishing confidence and trust in the market[142].

[141] Steven Raffaele, **Hurry Up and Wait: Air Carrier Liability for Flight Delays**. SMU Air Law Symposium, (February 21-22, 2008), p. 12.
[142] Shawcross and Beaumont, **Air Law VII** [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).

3.2.2.2. The Impact of the International Legal Regulation on the Insurance Liability

The impact of the international legal regulation on the insurance liability has brought about passengers confidence in the aviation sector. It expected that are a carrier that is involved in international air carriage of persons, goods and cargo must be insured to cover any eventuality. Article 50 of both the Montreal and Warsaw Conventions mandate the carriers be fully insured. The legal regulation of the insurance liability has made it possible for the passengers and cargo owners to properly indemnified.

CHAPTER FOUR: THE INTERNATIONAL AIR CARRIER LIABILITY LAWSUIT AND THE COMPENSATION PROVISIONS ACCORDING TO THE WARSAW CONVENTION 1929 AND MONTREAL CONVENTION 1999

The liability lawsuit of an air carrier accommodated by the compensation provisions enshrined in the Warsaw and Montreal Conventions with provisions for the judicial jurisdiction of the lawsuit. The conventions also identified who should be the parties in the lawsuits as well as establishing the limits of compensation in the case of death, damage loss of goods or cargo.

4.1. The International Air Carrier Liability Lawsuit

The international air carrier liability lawsuit can institute by the plaintiff or his agent against the carrier for loss, damage of luggage or death of a passenger or injury of a passenger. The lawsuit must institute at a place that has the judicial jurisdiction based on the provision of Article 33 paragraph 1 of the Warsaw and Montreal Conventions[143]. The claimant to a lawsuit must pay close attention to this provision as his right to a claim may be dismissed for lack of due diligence to the concept of jurisdiction.[144]

4.1.1. Judicial Jurisdiction over the Liability Lawsuit

Article 33 paragraph 1 of the Montreal Convention clearly states that: *"An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the agreement has been made or before the court at the place of destination"*.[145] it goes to show that a claim can only be made by the specified laid down procedures and by particular parties at places that have judicial jurisdictions.

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[143] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 220.
[144] Shawcross and Beaumount, **Air Law V11** [1009], **(**Butterworth for Publishing**,** London**,** 4th Edition, 1977).
[145] Bartholomew J. Banino, **Recent Development in Air Carrier Liability under the Montreal Convention**, the Brief 2009 (38), p. 13.

4.1.1.1. Judicial Jurisdiction over the Liability Lawsuit According to the Warsaw Convention and its Subsequent Amendments

The Warsaw Convention identified four judicial jurisdictions over the liability lawsuit[146]. These are *"(1) the domicile of the carrier (2) its principal place of doing business (3) the place where the ticket was bought (4) the place of destination"*[147] (p.24). The provisions of Article 33 of the Warsaw Convention as amended provides a suitable ground for the plaintiff to lay a claim to a compensation within the provided conditions for a jurisdiction.

4.1.1.2. Judicial Jurisdiction over the Liability Lawsuit According to the Montreal Convention

Bartholomew Bonino (2009) pointed out that, The Montreal Convention increased the judicial jurisdiction to five. These are: *"(1) the domicile of the carrier (2) its principal place of doing business (3) the place where the ticket was bought (4) the place of destination; or (5) in the case of personal injury, the principal and permanent place of residence of the plaintiff"*[148] (p. 25). These provisions provide some flexibility to the plaintiff in his quest for redress because it gives him sufficient options regarding where to institute a claim. It also gives room for the third party representation, especially in the case of death of the passenger, a relative or a family member can fully institute a claim in a court.

4.1.2. The Lawsuit Parties and Expiration of the Lawsuit

The lawsuit can only be instituted by interested parties and must be instituted within a given time frame. Because a lawsuit of this nature is expected to be filed by the affected parties, their agents or representatives. The lawsuit should file in a court of competent jurisdiction within the specified time limit and jurisdiction as contained in Article 33 of the Warsaw Convention[149]

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[146] Bartholomew J. Banino, **Recent Development in Air Carrier Liability under the Montreal Convention**, the Brief 2009 (38), p. 3.
[147] Bartholomew J. Banino, **Recent Development in Air Carrier Liability under the Montreal Convention**, the Brief 2009 (38), p. 3.
[148] Ibid.
[149] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 222.

4.1.2.1. The Lawsuit Parties

The parties to the lawsuit are deemed to be the persons who have an agreement as contained in the air tickets or airway bill. The agreed parties are usually the carrier and the passenger or the cargo owner. However, Article 36 of the Warsaw and Montreal Conventions hold that, in the case of successive air carriage, the liability to damage as a result of delay or accident borne by the carrier upon which the delay or accident occurred[150]. In a nutshell, the parties to the lawsuit are the carrier, the passenger or cargo owner or their representatives.

4.1.2.2. Expiration of the Air Carrier Liability Lawsuit

The airline liability lawsuit claim must institute within a definite time frame. Article 31 paragraph 2 of the Warsaw Convention, which deals with the timely notices of complaints contains that: "*In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal"*.[151] The failure of a claimant to file a complaint within the stipulated time will cause him to lose his right to compensation by the carrier. However, in the case of passenger's death, the window before expiration is two years from the date of the accident.

4.2. The Compensation Provisions (Specific and NON-Specific)

The compensation of passenger's loss or losses is as provided by the provisions of the Warsaw and Montreal Conventions. The compensation limits to passengers in the case of injury or death, loss or damage or destruction of luggage or cargo capture in Article 17 of the Warsaw Convention as amended. The limits established with the aim of safeguarding both parties from willful exploitation when the unforeseen occurs.

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[150] Speciale, Raymond **Fundamentals of Aviation Law, (**https://books.google.com.ng/books?isbn//, 2004), p. 220.

[151] Article 31, Paragraph 2, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Warsaw, 1999).

4.2.1. Compensation Limits

As already established, the carrier is liable in the case of damage, loss, injury or death of a passenger. What then is the commensurate compensation for the passengers' loss? Article 22 paragraph 1 of the Montreal Convention as amended states that: *"In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights".*[152] While the limit for destruction, damage and loss of baggage liability is limited to 1000 special drawing rights per passenger.[153] Whereas, the liability and compensation limit for cargo loss, damage, destruction or delay is *"limited to a sum of 17 Special Drawing Rights per kilogramme".*[154] These compensation limits are subject to the ability of the plaintiff's submission that the carrier caused the damage. As for the maximum compensation in case of passenger's death, Article 21 of the Montreal Convention as amended stipulates the maximum compensation limits for the death of a passenger. The provision in paragraph 1 unequivocally states that "For damages arising under paragraph 1 of Article 17 not exceeding 100, 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability"[155]. And stated in the second paragraph of the same article, that the carrier to get rid of the liability, if the compensation amount exceeded 100,000 special drawing rights, if the carrier proved that the damage is not due to the negligence or wrongful act or omission of the carrier or its employees or agents, or if the carrier proved the negligence or wrongful act or omission by a third party. The provisions of international conventions of compensating the passenger for damages do not apply in case if a person infiltrate inside the plane illegally, the infiltrator does not acquire the status of the passenger because there is no agreement between him and the carrier, so if the infiltrator suit the carrier, the lawsuit subject to legal rules applicable, according to the attribution rule in the judge's law which hearing the dispute, and this may lead to unsatisfactory result and that if the applicable law is the judge's law in the dispute takes the principle of unlimited liability of the carrier, in this situation despite the illegality

[152] Article 22, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[153] Steven Raffaele, **Hurry Up and Wait: Air Carrier Liability for Flight Delays**. SMU Air Law Symposium, (February 21-22, 2008), p. 17.
[154]Article 22, Paragraph 3, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).
[155] Art 21, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).

of the infiltrator entry on the board of the plane the infiltrator could obtain full compensation for the damage, while in the lawsuit that subjects to the international conventions the passenger gets a limited compensation which determined by the Warsaw in 1929 and Montreal in 1999[156].

4.2.2. Tighten Liability and Calculating the Compensation Amount

The Tightening of the liability of the carrier in air transportation aimed at providing customers with responsible service. This tightening contained in Article 25 of the Montreal Convention as amended. The provision states that; *"A carrier may stipulate that the agreement of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever".*[157] It is in line with the assumed liability of a carrier in the case of loss, damage or death of a passenger. The convention also stipulates the methods or method of calculating this compensation.

4.2.2.1. The Legal Tighten to Compensate and Tighten to Compensate by Agreement

The Warsaw and Montreal Conventions have structured in a way that the provisions of the Convention are above any other agreement that may enter by the parties that contravene the provisions of the conventions. Article 26 of the Montreal Convention provides that; *"Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention*".[158] This provision in a way compels all parties to design agreements that will be in line with the provision of the conventions as amended. Secondly, it allows for compensation above the stipulated compensation limits but not below the limits.

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[156] Atef Mohamed Faki**, the Evolution of the Liability of an Air Carrier, According to the Montreal Convention 1999**, (the Arab Renaissance House for Publishing, Cairo, 2004), p. 50.
[157]Bartsch, I.C. Ronald. **International Aviation Law: A Practical Guide**, (https://books.google.com.ng/books?isbn//, 2016), p. 118.
[158] Article 26, Paragraph 1, **Convention for the Unification of Certain Rules for International Carriage by Air,** (Montreal, 1999).

4.2.2.2. How to Calculate the Compensation Amount

The calculation of the amount is as set by the Montreal Convention as amended. The SDR as some directly referred to as the Drawing Rights stipulated by the International Monetary Fund (IMF).

The Warsaw Convention of 1929 and its Subsequent Protocols adopted "Franc Poincare" as monetary unit, Used to calculate the amount of compensation, which the carrier is committed to pay, But as a result of problems arising from the use of Poincare franc, the International Monetary Fund in 1968 decided to issue a new monetary unit on the basis of a certain weight of gold, called special drawing rights.

The SDR evaluated on the basis of a group of 16 countries members of the IMF group, under the terms of contribution of each of them by at least 1% of world trade, US dollar income in determining these rights by 33%, the pound sterling by 2%, the Deutschmark by 12.5%, the French franc, 3.5%, the Japanese yen by 7%, the Canadian dollar by 6%, and some other currencies by varying degrees and that was until the year 1980[159].

Starting from the year 1981 the International Monetary Fund settled for determining special drawing rights on the basis of the five national currencies: the US dollar, the Japanese yen, the German mark, the British pound, the French franc[160].

In 1975, the Main parties decided to approve the Montreal's four Protocols in 1975, and decided to use the SDR unit, and in the framework of the four protocols of Montreal has been Decide to raise the compensation limits in the scope of the Convention to 100 thousand SDR units, which was then equal to 100 thousand dollars, and entered into force on 14-06 - 1998[161].

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[159] Dhia Ali Ahmed Numan, **"How to Calculate Compensation in an Air Transport Contract of Goods between the International Conventions and National Legislation",** (the lighthouse Marrakech Library for Publishing, First Edition, 2006), p. 75.

[160] Medhat Al-Sadiq, **International Money and Foreign Exchange Transactions, (**Strange House for publication, without the date and place publication), p. 67.

[161] Ahmed Ibrahim Sheikh, **the Liability for the International Air Transport Damages Compensation, According to the Warsaw Convention 1929 and Montreal in 1999**, (The Arab Renaissance House for Publishing, Cairo, 2008), p. 504.

CONCLUSIONS

The various Conventions and Protocols to amend certain provisions of the conventions have helped in bringing order and decorum in international air transport. Before the Warsaw Convention, international maritime laws employed as the basic standards for international air transportation. However, with the advancement in technology and the growth of the aviation industry, the need to have a body of laws that will provide confidence to both the carrier and the traveller became paramount. Given this, the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 2 October 1929. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, The Hague, 29 September 1955. the Convention Supplementary to the Warsaw Convention for the Unification of Certain relating to International Carriage by Air Performed by a Person Other than the Agreement Carrier, Guadalajara, 18 September 1961. the Protocol to Amend the Warsaw Convention, Guatemala City, 8th March 1971. the Additional Protocol No 1, 2 [3], 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw, Montreal 25th September 1975. the Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol, Montreal 4th May 1966. the Convention for the Unification of Certain Rules for International Carriage by Air, Montreal, 28th May 1999, were held with the intention of providing a good base for air safe and regulation as well as safeguarding the interest of the passengers and their goods. This thesis examined the role and importance that these conventions play in international air transportation and the success of the convention in regulating international air transportation.

The liability and liability provisions in the conventions aimed at making the carriers act responsibly, and the passengers and cargo owners act responsibly too. The compensation provisions directed at ensuring that the carrier bears losses incurred by passengers for no faults of theirs. The provisions also protect the carrier from unnecessary exploitation by passengers with unreasonable claims through stipulated compensation limits.

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