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INTERNATIONAL REGULATION OF AIR CARRIAGE

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Abstract:

In the work is discussed the characteristics of fulfilling the air carriage according to the international norms and there are represented the considerations in accordance with the convention`s certain articles of Warsaw and Montreal Conventions, namely concerning the restriction of carriers' responsibility.

The author regards that, Warsaw system is the first attempt of unification of aviation norms. But, at present, as a result of development of civil aviation, the mentioned system got out-of-date and does not correspond to modern demands of air carriage. Its replacement with Montreal system is the inevitable necessity that must be accomplished by states by merging in this system.

I.

In the commercial life of any country, the need for carrying goods from one place to another cannot be overemphasized. In addition, goods are to be moved from one country to another. For these purposes, a contract of carriage is to be entered into. The persons, organizations or associations which carry goods are known as carriers. Goods may be carried by land (including inland waterways), sea or air.

The domestic and international law regulate air carriage. Law of carriage of goods by air is considerably more complicated than the law in relation to carriage of goods by sea or rail and possibly also by road. This is so because the law differs depending upon whether the carriage is domestic or international and because there is no single international regime governing all international carriage. The determination of which regime applies depends on the countries of departure and destination.

The Warsaw System is a unification of international law norms, on which is based on international air carriage. Warsaw System is made up from the following international normative actes:

- The Warsaw Convention for Unification of Certain Rules Relating to International Carriage by Air of 1929;
- The Hague Protocol to the Warsaw Convention. It was originally signed in 1955 and came into force in 1963;
- The Montreal Inter-carrier Agreement of 1966;
- the Guatemala City Protocol of 1971;
- The 1975 Montreal Protocols. The Montreal Protocol was signed in 1975 and entered into force in 1998;
- The Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal on 28 May 1999. The Montreal Convention came into force internationally on 4 November 2003.

The above Conventions/Protocols apply to "international carriage of persons, baggage or cargo". The term "international carriage" is defined in article 1 of the various instruments. Although the definitions differ slightly the differences are not material. The definition from the Montreal Convention is as follows:

For the purposes of this Convention, the expression international carriage means any carriage in which, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

There are two important aspects to the above definition. First, each Convention/Protocol will only apply when both the country of departure and the country of destination are parties to the Convention/Protocol. Therefore, it is necessary to ascertain which instruments the country of departure and country of destination have ratified in order to determine which Convention/Protocol will govern.

The second important aspect of the definition of "international carriage" is that domestic carriage will be caught by the definition where there is an "agreed stopping place" in the territory of another state. However, if the stop were unscheduled or not disclosed in the air waybill the carriage would probably be considered domestic carriage.

One final, and perhaps trite, point to note is that the Montreal Convention only came into force on 4 November 2003 and therefore can only apply to carriage that occurred after that date.

The Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air is an international convention, which regulates liability for international carriage of persons, luggage or goods performed by aircraft for reward. The Warsaw Convention was originally signed in 1929 and came into force in 1933. There are currently 151 state parties to the Warsaw Convention. The Convention regulates international air carriage law has modified the domestic law of the state parties. The Warsaw Convention established upper limits for such liability and insurance. Hague Amendment of 1955 modified the Convention, but as this proved unacceptable to the United States, a subsequent Agreement in Montreal was signed in 1961 liaising the limits of liability as regards airlines flying in or to the USA.

In particular, the Warsaw Convention:

- mandates carriers to issue passenger tickets;
- requires carriers to issue baggage checks for checked luggage;
- limits a carrier's liability to:

a) 16600 special Drawing Rights

b) 17 SDR Per kilogram for checking luggage and cargo;

c) 332 SDR for the hand luggage of traveler.

Nowadays, the 1929 Warsaw Convention contains outdated rules in the area of cargo documentation, requiring much specific information on the air waybill that has no commercial significance today. These requirements: make international air cargo transactions time consuming and inefficient, driving up their costs; inhibit the free flow of international air commerce; and serve as a barrier to electronic information exchanges.

We have to consider article 20, 22 and 25 of Warsaw Convention relating to liability of carrier. Article 20 of lays down the general rule, that the carrier is not liable if he proves that he and his agent have taken all necessary measures to avoid the damage or that is was impossible for him or them to take such measures. In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage. The standard of proof is high.

Article 22 provides the limits to the carriage liability, defined in terms of gold French Frances:

"In the carriage of passengers the liability of the carrier for each passenger is limited to sum of 125000 francs. When in accordance with the law of the court seized of the case, damage may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125000 franc. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability."

Liability is limited under article 25 and it damage results for the willful misconduct of the carrier or of his agents:

"The carriage shall not be entered to avail himself of the provisions of the Convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the Court seized of the case, in considered to be equivalent to willful misconduct.

Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment."

Some help would undoubtedly be provided by the entry into force on Montreal Additional Protocols 1975, which seek *inter alia* to substitute Special Drawing Rights for the gold France and the Guatemala Protocol 1971, which seeks the introduce absolute liability with increased limits passenger and baggage cases.

There is a profound difference between the Warsaw Convention and the Hague Protocol, on the one hand, and the Montreal Protocol and Montreal Convention, on the other hand, in relation to the loss of the right to limit. Under the Warsaw Convention and the Hague Protocol the carrier can lose the right to limit. Under the Montreal Protocol and Montreal Convention the right to limit is absolute and cannot be lost.

Article 25 of the Warsaw Convention provides that the carrier is not entitled to rely on those provisions of the Convention that limit or exclude liability if the damage is caused by wilful misconduct of the carrier or of his agents acting within the scope of their employment. In general, "wilful misconduct" has been held to mean something far beyond negligence, even gross or culpable negligence, and involves a person doing or omitting to do something which he knows and appreciates is wrong.

Under the Hague Protocol the test was changed in an effort to make it more precise. Under the Hague Protocol the carrier loses the right to limit if it is proved that the damage resulted from an act or omission of the carrier, or his servants or agents acting within the

course of their employment, done with intent to cause damage or recklessly and with knowledge that damage would probably result.

The Montreal Convention for the Suppression of unlawful acts against the Safety of Civil Aviation 1971 members it an offence unlawful and internationally, *inter alia* to perform an act of violence against a person on board an aircraft in flight where the act is likely to endanger the safety of the aircraft; to destroy an aircraft in service or to do damage it as to make flights unsafe or impossible; to destroy, damage or interfere with the operation of air navigation facilities or to communicate knowingly false information if this is likely to endanger an aircraft in flight.

The admit of the Convention was extended by the Montreal protocol 1988 to include acts of violence against a person at an airport servings international civil aviation which cause or are likely to cause serious injury or death, destroying or seriously ganging the facilities of such an airport or aircraft not in service located thereon and disputing the services of the airport.

The terrorist attacks of the 1970 in particular gave rise to a series of cases, which have established, for example, that recovery for mental distress arising out of an airplane hijack was possible under Warsaw Convention as amended by the Montreal Agreement of 1966 and that a carrier remains liable for injuries to passengers that occurred in a terrorist attack.

The question of liability or damage caused by aircraft to persons on the surface has also been dealt with the Rome Convention on Damage Caused by Foreign Aircrafts to Third Parties on Surface and the Montreal Protocol of 1978, provide for compensation to be paid upon proof only of damage caused by an aircraft that bears the responsible and under the 1952 Convention the registered owner of the aircraft is presumed to be the operator. The extend of liability is stipulated and on the reasons for the law level of reification has been the relatively limited level of the compensation provide for the system is based upon strict liability and on clear connection being established between the damage and the act causing the injury.

The Montreal Convention, formally the Convention for the Unification of Certain Rules for International Carriage by Air, is a treaty adopted by a Diplomatic meeting of ICAO member states in 1999. It amended important provisions of the Warsaw convention's regime concerning compensation for the victims of air disasters. The Convention re-establishes urgently needed uniformity and predictability of rules relating to the international carriage of passengers, baggage and cargo. Whilst maintaining the core provisions which have successfully served the international air transport community for several decades (i.e. the

Warsaw regime), the new convention achieves the required modernization in a number of key areas. It protects the passengers by introducing a modern two-tier liability system and by facilitating the swift recovery of proven damages without the need for lengthy litigation.

Under the Montreal Convention, air carriers are strictly liable for proven damages up to 100,000 Special Drawing Rights (SDR's), a mix of currency values established by the International Monetary Fund (IMF), approximately $138,000 per passenger at the time of its ratification by the United States in 2003. For damages above 100,000 SDR's, the airline must show the accident that caused injury or death was not due to their negligence or was attributable to the negligence of a third party. The Convention also amended the jurisdictional provisions of Warsaw and now allows the victim or their families to sue foreign carriers where they maintain their principal residence, and requires all air carriers to carry liability insurance.

The Montreal Convention also changes and generally increases the maximum liability of airlines for lost baggage to a fixed amount 1000 SDRs (the amount in the Warsaw Convention is based on weight of the baggage). Also, Montreal convention was brought about mainly to amend liabilities to be paid to families for death or injury whilst on board an aircraft.

Warsaw system is the first attempt of unification of aviation norms. But, at present, as a result of development of civil aviation, the mentioned system got out-of -date and does not correspond to modern demands of air carriage. Its replacement with Montreal system is the inevitable necessity that must be accomplished by states by merging in this system.

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