PASSENGERS, BAGGAGE, CARGO AND DELAY IN MONTREAL CONVENTION

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Abstract
Passengers on a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that international treaties known as the Montreal convention, or its predecessor, the Warsaw convention, including its amendments (the Warsaw convention system), may apply to the entire journey, including any portion thereof within a country. For such passengers, the applicable treaty, including special contracts of carriage embodied in any applicable tariffs, governs and may limit the liability of the carrier. This paper has done to evaluate Montreal Convention Carriage Performed by State and Carriage of Postal Items, Passengers and Baggage, Cargo and Delay. Findings show that The Montreal Convention may be applicable to journey and these Conventions govern and may limit the liability of air carriers for death or bodily injury, for loss of or damage to baggage, and for delay.

Keywords: Montreal Convention, Passengers, Baggage, Cargo, Delay

INTRODUCTION
The airline industry scrambles to recover from its "perfect economic storm," there is a growing conviction that the tough citizenship tests that virtually all countries impose on their airlines are a timeworn relic of another era. For over 50 years these tests have excluded US airlines from full access to foreign capital markets and from merging with, acquiring, or being acquired by, foreign airlines. The main competitive advantage these tests conferred--keeping foreign airlines out of the US domestic market--has done little to assure the viability of the cash-starved US airline industry. According to the author, the current challenge to the citizenship of DHL Airlines, an American air cargo corporation, provides an ideal opportunity to think seriously about how to put an end to the damaging effects of what he calls "this inefficient, anticompetitive, and poorly-administered citizenship impediment." While the Bush Administration has proposed some modest changes, a much more thorough reform is needed if airlines are truly to become a mature and viable industry. (Brian, 2009, p.201)

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Cargo transportation by air started when a small part of the cabin was allocated to cargos and freights which gradually led to designing and manufacturing bigger and more equipped aircraft which is still a growing development. To pursue this importance, Airlines has benefited from knowledge and experience of its human assets along with its fleet to offer services to its customers and passengers, whilst promoting the quality and quantities of its services, attempts greatly to secure safety and use state–of-the-art methods in attracting and carrying all kinds of cargos.

The number of serious initiatives have been undertaken in recent years to liberalize the regulatory regime that applies to international air transport services. These include the "Open Skies" initiative of the U.S., the multilateral air transport services agreement reached by several members of Asia Pacific Economic Cooperation forum, the proposal of the European Commission to establish a common aviation area between the European Union the U.S., the efforts of the Organization of Economic Cooperation and Development to develop model regulatory frameworks for international air cargo services, and the continued consideration by the World Trade Organization of applying the General agreement on Trade in Services to air traffic rights. All of these initiatives do or would provide U.S. air carrier’s greater opportunities to expand their overseas operations. According to the author, however, these initiatives have not addressed the effect of the proposed regulatory changes on the airline employees who work on board aircraft engaged in international operations (Duane, 2010).

The Montreal Convention (formally, the Convention for the Unification of Certain Rules for International Carriage by Air) is a multilateral 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 attempts to re-establish uniformity and predictability of rules relating to the international carriage of passengers, baggage and cargo. Whilst maintaining the core provisions which have served the international air transport community for several decades (i.e., the Warsaw regime), the new treaty achieves modernization in a number of key areas (David E, Ephraimson-Abt, 2004). This paper has done to evaluate Montreal Convention Carriage Performed by State and Carriage of Postal Items, Passengers and Baggage, Cargo and Delay.

**GENERAL PROVISIONS**

**Article 1 — Scope of Application**

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward.

   It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, 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.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single
operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.
4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein. (IATA 1999, p62).

**Article 2 - Carriage Performed by State and Carriage of Postal Items**
1. 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 1.
2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.
3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items (IATA 1999, p62).

**Article 3 — Passengers and Baggage**
1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:
   a) an indication of the places of departure and destination;
   b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.
2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.
3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.
4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.
5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability (IATA 1999, p63).

**Article 4 — Cargo**
1. In respect of the carriage of cargo, an air waybill shall be delivered.
2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means (IATA 1999, p63).

**Article 13 — Delivery of the Cargo**
1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which low from the contract of carriage (IATA 1999, p64).

**Article 19 — Delay**
The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. 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 (IATA 1999, p65).

**DISCUSSION & CONCLUSION**
The Montreal Convention may be applicable to journey and these Conventions govern and may limit the liability of air carriers for death or bodily injury, for loss of or damage to baggage, and for delay.

The main innovation of the Montreal Convention is an amendment to the conditions and amounts of air carrier liability. For instance, in the event of damage sustained in case of death or bodily injury of a passenger, the Montreal Convention establishes a so-called "two-tier" system of liability:

1. for each passenger the carrier shall not be able to exclude or limit its liability for damages not exceeding 113,100 SDRs (about EUR 129,000);
2. for each passenger the carrier may be liable for damages to the extent that they exceed 113,100 SDRs, unless the carrier proves that such damage was not due to its negligence or other wrongful act or omission, or such damage was solely due to the negligence or other wrongful act or omission of a third party (David E, Ephraimson-Abt, 2004).

An important aspect of the Montreal Convention is a more detailed regulation of air carrier liability for delay. First, it sets specific amounts of liability in case of delay: for each passenger the carrier's liability is limited to 4,694 SDRs (approximately EUR 5,350). This is allocated as follows: in respect of baggage – 1,131 SDRs (approximately EUR 1,290) per passenger, and in respect of cargo - 19 SDRs (approximately EUR 22) per kilogram. Also, the Montreal Convention provides that the carrier shall not be liable for damage occasioned by delay if it can prove that it took all measures that could reasonably be required to avoid the damage or that it was impossible for it to take such measures.

It should be noted that all of the above-mentioned limits of liability in respect of passengers, baggage and cargo are subject, under the Montreal Convention, to review every five years by the ICAO (as a result of which new limits of liability may be set depending on the rate of inflation). A simplified procedure has been introduced whereby limits of liability can be changed: any such change shall take effect six months after notification to the States Parties, provided that, within three months of the notification, a majority of the States Parties do not register their disapproval of the change. In accordance with this procedure, the first such review by ICAO took place in 2009, as a result of which all limits of air carrier liability, originally established in the text of the Montreal Convention of 1999, were increased by approximately 10%. It is these increased limits of liability that apply today and are specified in this client alert.

The innovations of the Montreal Convention also include the possibility of bringing an action against an air carrier for damages that occurred as a result of death or injury of a passenger before the national court of that passenger’s residence. In this case, in order to bring an action it is only necessary that the carrier has a representative office in and operates air services to that
country. Furthermore, the Montreal Convention introduces the mandatory insurance of carrier liability to passengers and cargo owners, and any State Party to which the air carrier operates air services may require it to furnish evidence that it maintains adequate insurance covering its liability.

References

1. Brian F. H. (2009), A New Approach to Foreign Ownership of National Airlines, International Aviation Law Institute, DePaul University College of Law