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# **LIABILITY OF AIR CARRIERS FOR PASSENGER INJURIES: EXPLORING THE PARAMETERS OF 'ACCIDENT' UNDER INTERNATIONAL AVIATION CONVENTIONS**

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& DIVYANSH BHATNAGAR<sup>2</sup>

## **ABSTRACT**

This research paper aims to examine the various dimensions of air carrier liability concerning passenger injuries, with a primary focus on Article 17 of the Warsaw Convention and its contemporary equivalent, the Montreal Convention. The international aviation agreements serve to specify the parameters within which airlines have responsibility for the physical harm endured by passengers during international air travel. The concept of an “accident” plays a significant role in liability, as it is a phrase that is not explicitly defined in these standards but is crucial in assessing eligibility for compensation. The paper explores notable legal cases that have influenced the understanding and application of the term “accident” in relation to air carrier liability. This paper analyses the significant legal case of *Sethy v. Malev-Hungarian Airlines*, which established the definition of an “accident” to include unforeseen or atypical incidents that are beyond the passenger's influence. The practical implementation of this definition is examined by analysing several instances of passenger injuries occurring during flight operations, thereby elucidating the intricate nature of the concept.

Moreover, the paper examines the pivotal stages of embarkation and disembarkation, delving into the determinants of a passenger's legal standing during these processes. This text examines the establishment of legal precedents in instances such as *Hunter v. Lufthansa Etihad Airlines* and *McCarthy v. Northwest Airlines*, among others. It demonstrates how courts ascertain whether passengers are engaged in the act of embarking or disembarking.

The matter of liability extends beyond air carriers and encompasses several other parties, including

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airport operators, security agencies, and ground handling services. The article explores the complex legal connections and obligations of these entities, referencing legal cases such as *Re Air Disaster at Lockerbie*, *Baker v. Landsell Protective Agency*, *Vumbaca v. Terminal One Group Association L.P.*, and *Johnson v. Allied Eastern States Maintenance Corp.* to clarify the boundaries of liability.

This paper examines the dynamic nature of health-related passenger injuries, specifically Deep Venous Thrombosis (DVT), within the context of air travel. It delves into the analysis of legal cases, such as *Olympic Airways v. Husain* and *Hu v. Air China Limited*, to determine the classification of these conditions as “accidents” and the corresponding liability of air carriers.

## INTRODUCTION

According to Article 17 of the Warsaw Convention, an air carrier can be held accountable for bodily injury resulting from an accident that occurs during international flights. Once an individual establishes evidence of physical harm resulting from an accident, the sole legal recourse available to the air carrier is to assert that it undertook all requisite precautions to prevent the occurrence of the damage, or alternatively, that it was impracticable to implement such precautions.<sup>3</sup> Therefore, it establishes the parameters under which an airline may be held accountable for the well-being of its passengers. The aforementioned criteria pertain to instances of physical harm resulting from accidents occurring either during the course of air travel or during the act of boarding or disembarking from an aircraft. Nevertheless, this norm does not provide a definitive definition for the term 'accident'.

The *Sethy v. Malev-Hungarian Airlines*<sup>4</sup> case involved an incident where a passenger sustained injuries as a result of slipping and falling over a piece of luggage that obstructed the aisle during the boarding process. The court determined that the incident in question did not meet the criteria for classification as an “accident” due to the absence of any unforeseen or extraordinary circumstances associated with the presence of a suitcase in the aisle of an aircraft during the boarding process. The court expressed its opinion that the plaintiff failed to provide any details regarding the incident that would indicate a deviation from standard boarding procedures or identify any actions by airline staff that could be attributed to his injury. Additionally, the court

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<sup>3</sup> Article 20 of the Warsaw Convention.

<sup>4</sup> *Sethy v. Malev-Hungarian Airlines*, 2000 US Dist. Lexis 12606 (S.D.N.Y., 2000).

noted that it is common for bags to be situated in different areas within the cabin before a flight. The primary objective of the Warsaw Convention was to provide a legal framework wherein wounded passengers could be compensated without the burden of proving culpability, as the sole requirement for compensation was the demonstration of the accident itself. Any incident that is unforeseen or atypical and originates from sources outside the control of the passenger should be classified as an accident in accordance with the provisions outlined in Article 17.

In order for the Warsaw Convention to be deemed applicable, it is necessary for the accident resulting in damage to occur throughout the stages of embarkation and disembarkation. In the legal proceedings of *Hunter v. Lufthansa & Etihad Airlines*,<sup>5</sup> the court delineated a set of criteria to ascertain the status of a passenger as having disembarked or not. These criteria encompassed the passengers' actions at the time of the incident, any limitations imposed on their mobility, the imminent nature of their boarding, and the spatial proximity to the departure gate.

In a separate instance<sup>6</sup>, the court's decision underscored that the important determinant was not the physical location of the passengers, but rather their specific activities at the time. The court explicated that in order for the plaintiff, specifically the passenger, to embark on the aeroplane, several conditions needed to be met. The aforementioned procedures encompassed the following steps: presenting a ticket, obtaining boarding passes and baggage tags, being assigned a designated seat, undergoing customs and immigration procedures, undergoing security checks for both personal and baggage screening, transitioning to the bus, boarding the bus, travelling on the bus, alighting from the bus, and ultimately entering the aircraft. Moreover, in the legal matter of *McCarthy v. Northwest Airlines*,<sup>7</sup> the court adopts the viewpoint that assessing whether a passenger is in the process of embarking necessitates an examination of the passenger's conduct at the time of the incident, the actions undertaken by the passenger during the occurrence of the injury, and the degree of authority exercised or anticipated from the carrier during the boarding procedure.

In the legal matter of *Dick v. American Airlines*,<sup>8</sup> the court rendered a decision wherein it concluded that a customer who suffered injuries on an escalator while transitioning between

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<sup>5</sup> *Hunter v. Lufthansa & Etihad Airlines*, 09 CV 3166 (RJD) (JMA) (E.D.N.Y. Feb. 26, 2013).

<sup>6</sup> *Day v. Trans World Airlines*, 393 F. Supp. 217 (S.D.N.Y. 1975).

<sup>7</sup> *McCarthy v. Northwest Airlines*, 862 F. Supp. 17 (1994).

<sup>8</sup> *Dick v. American Airlines*, 476 F. Supp. 2d 61 (D. Mass. 2007).

boarding gates was actively involved in the act of embarking or disembarking. In the case of *Ugaz v. American Airlines*<sup>9</sup>, the court reached a decision that classified a passenger who experienced a slide on a non-operational escalator while transitioning from the aeroplane to the customs area as being in a state of disembarkation.

## **DEFINITION OF “ACCIDENT” & LIABILITY ARISING FROM IT**

The term “accident” is defined in Annex 13 of the Chicago Convention. According to this definition, an accident refers to an event that occurs during the operation of an aircraft, starting from the moment individuals board the aircraft with the intention of flight until all passengers have disembarked. This event involves either fatal or serious injuries to passengers, damage or structural failure of the aircraft, or the aircraft being missing or completely inaccessible. Incidents, in the context of aircraft operations, encompass many events that have the potential to impact or compromise the safety of an aircraft. *Singhal v. British Airways*,<sup>10</sup> involved a customer who experienced bodily damage as a result of stepping down a distance of 6 inches during the process of disembarking from the aircraft. However, the plaintiff was not granted compensation in this particular instance. The court in the United Kingdom determined that the airport manual mandated the measurement of distance, and there were no extraordinary or unforeseen circumstances surrounding the aforementioned occurrence.

According to Article 30(1) of the Montreal Convention, in cases where a claim is made against a servant or agent of the carrier regarding damage covered by the Convention, the servant or agent may assert the same conditions and limits of liability as the carrier, provided they can demonstrate that their actions were within the scope of their employment. However, in accordance with Article 30(3), this rule is not applicable in cases where it is established that the damage occurred as a result of a deliberate act or omission by the servant or agent, carried out to cause harm or with reckless disregard and awareness that damage would likely ensue.

The court ruling in the *Lockerbie Air Disaster* case<sup>11</sup> determined that a third-party contractor responsible for security, operating independently, was considered an agent of the carrier.

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<sup>9</sup> *Ugaz v. American Airlines*, 576 F. Supp. 2d 1354 (S.D. Fla. 2008).

<sup>10</sup> Decision rendered by the Uxbridge County Court in England on November 2, 2006 (Unpublished).

<sup>11</sup> *Re Air Disaster at Lockerbie*, 776 F. Supp. 710 (D.C.N.Y., 1991).

Consequently, this contractor might be subject to the provisions of the Warsaw Convention. Similarly, in the case of *Baker v. Landsell Protective Service*,<sup>12</sup> the security service in question was contracted by the carrier, as mandated by legal obligations, to conduct security screenings of passengers and their carry-on baggage before boarding. The aviation security service providers may take advantage of the constraints as they were fulfilling the responsibilities that would otherwise be mandated for the carrier. In the legal matter of *Vumbaca v. Terminal One Group Association L.P.*,<sup>13</sup> the Federal District Court situated in the Eastern District of New York rendered a decision affirming that an operator of an airport terminal acts as a representative of the carrier in the context of ascertaining liability pursuant to Article 30(1) of the Montreal Convention. The reason for this is that the terminal operator was carrying out their duties in accordance with the contract of carriage established between the passenger and the airline responsible for her transportation. As a result, the Montreal Convention serves as the exclusive legal recourse for the plaintiff in her grievances against the terminal operator. The Court concurred that the Montreal Convention was applicable in this case, as Terminal One acted as a representative of the air carriers it served and its acts were in keeping with the airlines' contractual obligations to transport passengers.

The aforementioned legal precedent, *Johnson v. Allied Eastern States Maintenance Corp.*,<sup>14</sup> involved the application of the aforementioned law to corporations providing skycap services, specifically those responsible for assisting passengers in boarding aircraft. On July 12, 1978, Gwendolyn and Zaccheus Johnson made arrangements to go by air from Baltimore, Maryland, to Nassau, located in the Bahamas, specifically on Eastern Airlines Flight 941. The individuals were transported to Baltimore-Washington International Airport by their offspring. Upon their arrival, Mrs. Johnson, who suffers from arthritis, was promptly greeted by a skycap affiliated with Allied. The skycap kindly extended an offer for a wheelchair to assist Mrs. Johnson as she disembarked from the vehicle. The individual consented and entered the wheelchair, afterwards being escorted by the skycap through the terminal, bypassing the check-in gate, and proceeding onto a boarding ramp that provided access to the aircraft. At the midpoint of the ramp, the wheelchair encountered a metal strip, resulting in its overturning and causing Mrs. Johnson to be propelled against the wall and subsequently onto the floor. Despite the Johnsons' persistence in their trek to Nassau, Mrs. Johnson had significant discomfort for a prolonged period. Subsequently, she acquired knowledge

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<sup>12</sup> *Baker v. Landsell Protective Service*, 590 F. Supp. 165 (S.D.N.Y. 1984).

<sup>13</sup> *Vumbaca v. Terminal One Group Association L.P.*, 859 F. Supp. 2d 343 (E.D.N.Y. 2012).

<sup>14</sup> *Johnson v. Allied Eastern States Maintenance*, 488 A.2d 1341 (D.C. 1985).

of having incurred a fracture in her foot along with several other bodily traumas. The court determined that the primary criterion is solely whether the specific action undertaken by the agent, which led to harm, was in support of the transportation agreement. In this particular scenario, the condition is readily satisfied. The act of boarding the passenger onto the aircraft can be considered as a means of advancing the contractual agreement for transportation. In the absence of a skycap and a service contract between Allied and Eastern Airlines, the responsibility of assisting Mrs. Johnson in boarding the plane would have fallen upon the airline itself. Given that Allied was fulfilling a portion of the airline's obligations as outlined in the contract of carriage, it possessed the same level of protection as the airline itself would have been entitled to under the Convention, with no additional privileges or disadvantages.

Furthermore, according to Standard 3.45 of the International Civil Aviation Organisation (ICAO) Annex 9, which is part of the Chicago Convention on Facilitation, it is mandated that the air carrier assumes the responsibility for the safekeeping and well-being of passengers and crew members until they have been officially granted entry into a state in accordance with Standards 3.42 and 3.43 of the aforementioned Annex. Passengers possess the right to initiate legal action against the airline beyond the scope of the Convention, through legal frameworks that do not shield the airline through the imposition of liability limitations. Individuals who meet certain criteria have the right to make a legal claim under the national law, provided that their claim does not come within the scope of Article of the Warsaw Convention. This convention serves as the exclusive foundation for liability claims. The user's text lacks academic tone and structure. It should be rewritten as follows: “ The resemblance between Article 17 of the Montreal Convention and Article 17 of the Warsaw Convention is notable, albeit not identical. This provision encompasses compensation for any harm incurred in the event of a passenger's death, injury, or physical harm. Hence, it is imperative that the harm incurred as a result of an unforeseen incident, whereby two conditions must be met: (i) there must exist a causal connection between the harm and the incident, and (ii) the occurrence leading to the harm must meet the criteria of being classified as an accident. According to Article 17(1) of the Montreal Convention, the carrier assumes responsibility for any harm suffered by a passenger resulting from the death or physical injury, provided that the incident leading to the death or injury occurred either on the aircraft or during the process of boarding or disembarking.

## LIABILITY OF AIRPORT OPERATORS

The determination of the status and function of the airport operator revolves around establishing whether the operator acts as an independent contractor in relation to the passenger or as an agent of the air carrier, responsible for fulfilling a portion of the carrier's obligation to transport individuals or cargo between different locations. According to three judgements<sup>15</sup> rendered by the Supreme Court of Cassation in Italy, it was determined that the Warsaw Convention does not apply to ground handling and deposit services. Furthermore, these services cannot be regarded as ancillary to a contract of carriage by air, and as a result, they fall under the jurisdiction of Italian domestic law.

In contrast to Article 17(2) of the Montreal Convention, which explicitly includes the term “carrier” to encompass damage to baggage, Article 17(1) just use the phrase “carrier” without reference to its servants or agents. However, it is worth noting that the term in question can also be inferred from Article 17(1), as Article 21 specifically addresses the issue of compensation in the event of harm or death of a passenger and employs this particular term. Hence, the issue of compensation arising from culpability under Article 21 can only be considered if the carrier's servant or agent is responsible for causing death or harm to a passenger, as stipulated in Article 17(1).

A frequently encountered concern pertains to the party responsible for the harm caused to a facility in close proximity to the airport as a result of an aircraft deviating slightly from its intended trajectory due to the ingestion of birds into its engine during takeoff or landing. Furthermore, there is a question as to whether this incident of bird strike can be classified as an accident. In close proximity to the airport, there was a little deviation in the flight path of an aircraft. A bird strike refers to the occurrence of a physical impact between an avian organism and an aircraft while the latter is engaged in flight or during the phases of takeoff or landing.

The case of *Hawaiian Airlines, Inc. v. United States*,<sup>16</sup> revolves around a bird strike incident. Specifically, a Lockheed Electra L-188 aircraft experienced damage when it encountered egrets being ingested into two of its engines during the landing process at Patrick Air Force Base in Florida. The plaintiff argued that the government displayed negligence by allowing circumstances

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<sup>15</sup> (No. 9357/1990, No. 8531/1992, and No. 9810/1997).

<sup>16</sup> *Hawaiian Airlines Inc. v. United States*, 16 Av. Cas. (CCH) 17,744 (M.D. Fla. May 7, 1981).

that facilitated bird nesting at Patrick, particularly in close proximity to the runways. Additionally, the plaintiff claimed that the government failed to divert or postpone the aircraft's landing until the birds had vacated the area. In accordance with Florida legislation, the airport operator is legally obligated to exercise due care, caution, and diligence in ensuring the provision and upkeep of the airfield in a condition that reasonably ensures safety for its intended purposes and apparent design. The district court acknowledged that the bird-control programme implemented at Patrick Air Force Base mandated airport staff to promptly report any sightings of birds on the airfield.

According to the court's ruling, the defendant had an obligation to exercise a reasonable level of care in order to ensure the airfield was maintained and operated in a reasonably safe manner. This included the responsibility to alert aircraft of any known hazards, such as the presence of birds on or near the runway, and to take appropriate measures to prevent birds from occupying the runways. Upon evaluating the bird-control programme, the Florida court determined that the government had exhibited appropriate levels of care and diligence in the maintenance and operation of the airfield. The complaint was subsequently dismissed by the court. In a separate legal matter, specifically *Safeco Insurance Co. v. City of Watertown*,<sup>17</sup> an incident occurred involving the crash of a Sabliner jet at Watertown Municipal Airport in South Dakota. The crash was a result of the ingestion of gulls into both of the aircraft's engines. Among other things, the plaintiff claimed negligence against the airport operator.

According to a court in South Dakota, the essential components of a negligence claim consist of the existence of a duty owed by the defendant to the plaintiff, a violation of this obligation, and a demonstration that the breach directly caused the loss suffered by the plaintiff. The court easily determined that the airport operator had an obligation, separate from federal legislation, to ensure that pilots utilizing the airport exercised reasonable caution in maintaining a hazard-free environment or providing notice of any hazards unknown to the pilots. The key concern revolved around the presence of avian-related challenges at the airport, necessitating the issuance of cautionary notices. The court recognised the inherent challenges associated with fully eradicating a bird issue and determined that the airport operator had the option to employ a Notice to Airmen (hence referred to as 'NOTAM') as a means to apprise pilots of the bird-related risk. The court attributed blame to the airport operator primarily due to their failure to issue the Notice to Airmen (NOTAM). According to the district court's ruling, the pilot and co-pilot were deemed non-

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<sup>17</sup> *Safeco Insurance Co. v. City of Watertown*, 529 F. Supp. 1220 (D.S.D. 1981).

negligent due to their adherence to standard operating protocols, implementation of reasonable safeguards, and thorough examination of any relevant Notices to Airmen (NOTAM) pertaining to the airport in question.

The case of *Insurance Co. of North America v. City of New Haven*<sup>18</sup> involves an incident at the Tweed-New Haven Airport in Connecticut, where a Cessna Citation aircraft crashed during take-off due to the ingestion of gulls. The Connecticut court employed conventional negligence rules to ascertain if the operator exhibited negligence. To substantiate their claim, the plaintiff had to demonstrate that the airport operator owed them a duty of care, that this duty was violated, and that the violation directly resulted in the incurred damages. The court determined that the airport operator bears the responsibility of exerting a reasonable level of care and control in order to safeguard its invitees from potential hazards that can reasonably be foreseen to arise from the state of the premises or the activities occurring therein. Given the recognised presence of birds as a potential threat at the airport, it becomes apparent that the responsibility falls upon the airport operator to fulfil their duty of exercising reasonable care towards pilots utilising the airport. This duty entails taking appropriate measures to address the existing bird hazard, or at least, providing adequate warning to pilots who may be unaware of the potential danger. The court conducted an evaluation of the strategies implemented by the airport operator in order to mitigate the risk posed by birds.

The court determined that there was a lack of evidence indicating that the airport operator had any bird attractions in place. The amount in question is \$17. Nevertheless, the court acknowledged that the Notice to Airmen (NOTAM) has consistently been recognised as the prevailing approach for informing pilots about the presence of avian threats. The airport's failure to fulfil this obligation can be considered an act of carelessness. The consensus among ICAO Member States was that the operator's failure to issue a NOTAM resulted in their inability to reach an agreement on the necessity of developing a convention on air traffic control (ATC) liability. According to Article 17(1) of the Montreal Convention, the carrier is held responsible for any damages incurred in the event of a passenger's death or bodily injury, provided that the accident occurred on board the aircraft or during the processes of embarking or disembarking. The aforementioned conditions refer to physical injuries that are incurred as a result of an accident occurring either on an aircraft

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<sup>18</sup> *Insurance Company of North America v. City of New York*, 71 N.Y.2d 983, 529 N.Y.S.2d 70, 524 N.E.2d 424 (N.Y. 1988).

or during the act of boarding or disembarking said aircraft. Nevertheless, this norm does not provide a definitive definition for the term 'accident'.

In the legal case of *Air France v. Saks*,<sup>19</sup> the United States Supreme Court ruled that an incident falling under the purview of Article 17 is characterised by an unforeseen or atypical occurrence or circumstance that originates from outside the passenger. In this scenario, the court was convened to determine whether the occurrence of a passenger's unilateral hearing loss resulting from the depressurization commonly experienced during a routine descent might be classified as an accident. The Court determined that the absence of an accident might be established in cases where a passenger's internal reaction resulted from the typical, customary, and anticipated functioning of the aircraft. Therefore, the individual travelling in this particular instance was unable to regain their health or well-being. The Court proceeded to assert that any form of injury is the result of a series of interconnected causes.

## **RECOURSE AGAINST THIRD PARTIES**

The Montreal Convention establishes and prescribes financial liability caps for individuals travelling internationally who are affected by aviation accidents in which external parties may be held responsible for the resulting harm. The airline has the option to mitigate its obligation in accordance with article 21(2)(b) by exempting itself from any liability above the prescribed limits stated in Article 21(1), provided that it can demonstrate that the injury was caused by third parties. According to the Montreal Convention, it is no longer necessary for plaintiffs to transform acts of ordinary negligence into the equivalent of reckless or intentional acts. Nevertheless, a crucial aspect to consider when examining any potential international aviation passenger lawsuit is whether the airline may be deemed liable or if it is merely a casualty of the actions carried out by the airport authorities, notwithstanding the significant extent of suffering, harm, and loss incurred. Potential claimants may potentially invoke Article 21(2)(a) of the Montreal Convention as a basis for asserting that the defendants acted negligently. The airlines in question may potentially invoke Article 21(2)(b) of the Montreal Convention as a legal basis to contend that the injuries were caused by a third party rather than by the airline's operations. The concept of negligence necessitates the provision of evidence indicating the perception of risk or hazard by a reasonable individual within a certain cultural context.

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<sup>19</sup> *Air France v. Saks*, 470 U.S. 392 (1985).

In the legal matter of *Japan Airlines v. Port Authority of New York and New Jersey*,<sup>20</sup> Japan Airlines initiated a lawsuit against the Port Authority on grounds of negligence. The objective of the lawsuit was to obtain compensation for the damages incurred by Japan Airlines aircraft. These damages were attributed to the alleged negligence of the Port Authority, specifically their purported failure to adequately remove snow and ice from the airport runway and surrounding areas. According to the Court of Appeals, the Port Authority, in its capacity as an airport operator, is obligated to ensure that JFK is maintained in a sufficiently safe condition for the protection and welfare of passengers and carriers who may bring legal action against the airport. It is imperative to guarantee that the conditions at the airport are conducive to the safe landing and departure of aircraft and to provide appropriate notification of any circumstances that may compromise the secure operation of an aircraft. The Court of Appeals determined that the Port Authority bears legal responsibility for the financial losses incurred by Japan Airlines.

According to Article 37 of the Montreal Convention, it is specifically stated that the rules within the convention should not affect the determination of whether a person who is responsible for damage has the right to seek compensation from another party. The drafters of the Montreal Convention deemed it crucial to incorporate Article 37 in order to safeguard the air carrier's entitlement to pursue legal action against any other accountable individual or business while upholding the carrier's rights as outlined in the Convention.<sup>21</sup> Article 37 pertains to the regulation of a matter that initially seems obvious, specifically the entitlement of the air carrier to seek redress from third parties responsible for or involved in causing the damage.

According to the Montreal Convention, there exists a principle of strict liability, whereby the responsibility for any loss incurred is placed on the air carrier. This liability extends to losses caused or influenced by other parties, such as the carrier's employees or representatives, as well as any other airline involved in the execution of the flight or any other relevant third party as defined in Article 21 paragraph 2b. Furthermore, in the context of carriage involving consecutive air carriers, as stipulated in Article 36, it is important to note that the consignor or consignee retains the choice to hold any of the involved air carriers accountable, irrespective of whether the specific air carrier in question was directly responsible for the incurred loss or not.<sup>22</sup> According to

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<sup>20</sup> *Japan Airlines Co. v. Port Authority of New York & New Jersey*, 178 F.3d 103 (2d Cir. 1999).

<sup>21</sup> Demsey and Milde on the Montreal Convention, p. 227.

<sup>22</sup> Montreal Convention, Elmar Maria Giemulla, Ronald Schmid et al., eds, Montreal Convention, looseleaf (Alphen aan den Rijn, the Netherlands: Kluwer Law International, 2006).

Article 37, the Montreal Convention does not prohibit the air carrier from exercising any right of recourse to which it is entitled.

## **LIABILITY FOR INJURIES DURING TURBULENCE**

The United States Second Circuit rendered a decision in the case of *Magan v. Lufthansa German Airlines*,<sup>23</sup> wherein it was established that the assessment of whether a specific instance of turbulence qualifies as an accident necessitates a thorough examination of the factual circumstances on a case-by-case basis. The Second Circuit's determination that an airline can be held legally responsible for injuries incurred during turbulence was based on the interpretation of the term "accident" provided by the Supreme Court in the *Saks* case. The court reiterated the *Saks* formulation, which defines the term 'accident' as a sudden or atypical incident or occurrence that originates externally from the passenger. However, if an injury unequivocally arises from a passenger's internal response to the typical, normal, and anticipated functioning of the aircraft, it cannot be attributed to the accident.

Consequently, a passenger can seek compensation for injuries incurred during turbulence, provided that the individuals responsible for determining the facts concur that the turbulence was unanticipated or atypical in terms of its severity or frequency. One of the primary objectives of the Warsaw Convention is to restrict the potential liability of carriers for accidents sustained by passengers, to avoid the deterrence of potential investors in the airline business.<sup>24</sup> The Montreal Convention shares similar objectives as well. In the legal matter of *Quinn v. Canadian Airlines International Ltd.*,<sup>25</sup> the Ontario Court General Division observed that existing legal precedents support the notion that severe turbulence has the potential to be classified as an incident falling within the scope of Article 17 of the Warsaw Convention. The statement does not assert that a certain level of turbulence, which is lesser, uncommon, or unforeseen, cannot be considered an accident.

## **LIABILITY FOR HEALTH-RELATED ISSUES**

A further concern that may arise pertains to the potential liability of the air carrier for any harm caused to a passenger's well-being while onboard an aircraft. The International Civil Aviation

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<sup>23</sup> *Magan v. Lufthansa German Airlines*, 33 F.3d 158, 162 (2<sup>nd</sup> Cir. 2003) (*Magan II*).

<sup>24</sup> *Wallace v. Korean Air*, 214 F.3d 293, 296 (2d Cir. 2000).

<sup>25</sup> *Quinn v. Canadian Airlines International Ltd.*, [1994] 18 O.R. (rd) 326, 333.

Organisation (ICAO) has established specific Standards and Recommended Practises (SARPS) about the well-being of individuals travelling by air, by the authority granted under Article 44 of the Chicago Convention.<sup>26</sup> Resolution A29-15 of the International Civil Aviation Organisation (ICAO) Assembly, which was adopted by the contracting States, called for the gradual prohibition of smoking on all international flights by July 1996. The aforementioned resolution has been implemented in the domestic legislation of the United States under 49 U.S.C. section 41706 in the year 2000. Similarly, in the United Kingdom, airlines have voluntarily adopted measures to prohibit smoking on board.

The case of *Olympic Airways v. Husain*<sup>27</sup> in the United States Supreme Court involved an individual with asthma who, because of the significant health hazards posed by ambient cigarette smoke, requested and was provided seats for himself and his spouse in the non-smoking area of the aeroplane. Upon entering the plane, the individual became aware that the assigned seats were situated a mere three rows in proximity to the designated smoking area. As a result, the individual experienced a severe asthma attack, ultimately leading to their demise. The widow submitted a claim in accordance with the provisions of Article 17. The matter at hand was the determination of whether the individual's demise was a result of an incident falling under the purview of Article 17. The court deliberated on the matter of whether the intervention, acting as a link in the causal sequence of interactions between the individual with asthma (or their spouse) and the flight attendant, had any discernible impact. The Court rendered a 6-2 decision affirming that the incidents that transpired aboard the aircraft were deemed an accident as defined by Article 17 of the Warsaw Convention.

The Court referenced its previous ruling in *Air France v. Saks*,<sup>28</sup> whereby it established that any form of harm can be attributed to a series of causative factors. It further determined that an accident is deemed to have transpired when one of these factors, occurring externally to the passenger, is deemed to be an atypical or unforeseen event. The court dismissed Olympic Airway's contention that solely the presence of cigarette smoke was pertinent and that no incident transpired due to the flight attendant's lack of action. The refusal of the flight attendant to reseat Husain on three separate occasions can be identified as a contributing factor in the sequence of events that

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<sup>26</sup> Usha Balasubramaniam, "Air Passenger Health and Consumer Protection," *Journal of Air Law and Commerce*, vol. 73(675): 2008, p. 678.

<sup>27</sup> *Olympic Airways v. Husain*, 540 U.S. 644 (2004).

<sup>28</sup> *Air France v. Saks*, 470 U.S. 392 (1985).

ultimately resulted in his death. Furthermore, the attendant's denial of the deceased's plea for aid can be classified as a discrete incident within this chain of causality.

Deep Venous Thrombosis, a health condition also known as DVT, is a potential concern that can arise over prolonged periods of sitting. Deep vein thrombosis (DVT) refers to the formation of a blood clot within the deep veins of the lower extremities. The blood clot does not exhibit migratory behaviour. Deep vein thrombosis (DVT) typically manifests in the distal lower extremity, specifically the calf, however, it can occasionally manifest in the proximal regions such as the thigh and pelvic area. Deep vein thrombosis (DVT) occurring in the calf muscle of the lower extremity hinders the venous return to the heart as a result of the formation of a blood clot within the affected vein. In the event that the clot becomes dislodged, it has the potential to ascend and infiltrate the pulmonary vasculature, thereby obstructing oxygen delivery and inducing a pulmonary embolism, which, in certain instances, may result in fatality. The potential threat of a clot that may have developed during an extended journey may not manifest until several weeks have elapsed. At this juncture, the individual would have likely encountered pronounced muscular contractions and discomfort in the lower extremities, prompting the inclination to pursue medical intervention.

In instances when deep vein thrombosis (DVT) occurs after an extended air travel, it is advisable to promptly seek medical intervention upon the manifestation of symptoms. This is due to the comparatively straightforward and efficacious medical procedures available for expeditious and successful clot treatment.<sup>29</sup> In the event that the bodily injury or death of a passenger does not result from an incident falling within the scope of an Article 17 accident as defined by the Montreal Convention, there exists no grounds for the imposition of legal responsibility upon the air carrier in accordance with the provisions of the Convention. Instances of physical diseases experienced by passengers during or after a flight, including heart attacks, asthma attacks, and diabetic shock, do not fall within the scope of Article 17 accidents as defined by the Warsaw Convention. Consequently, air carriers are not held accountable for damages under the provisions of the Warsaw Convention about such situations.<sup>30</sup>

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<sup>29</sup> George N. Tompkins, Jr., "Deep vein Throbosis (DVT) and Air Carrier Legal Liability – The Myth and the Law," *Air and Space Law*, vol. 26(4-5): September 2001.

<sup>30</sup> *Krys v. Lufthansa German Airlines*, 119 F.3d 1515, 1520 (11<sup>th</sup> Cir. 1997); *Rajcooar v. Air India*, 89 F. Supp. 2d 324 (E.D.N.Y., 2000)

In the legal matter of *Hu v. Air China Limited*,<sup>31</sup> it was observed that a passenger experienced a sudden collapse and subsequent demise while in the process of queuing at the immigration/passport checkpoint at Malpensa Airport. This unfortunate incident occurred after the completion of a direct flight originating from Shanghai, China and concluding in Milan, Italy. The postmortem examination determined that the individual's demise was attributed to a significant occurrence of pulmonary thrombosis embolism. The family endeavoured to prove Air China's liability by asserting that deep vein thrombosis (DVT) qualifies as an article 17 accident and that the airline's failure to provide enough warning about the risks associated with DVT might be subject to legal action, either as an Article 17 accident or in accordance with local legislation. The court in this particular case dismissed the assertion, asserting that the Montreal Convention is the sole governing authority and supersedes any local legislation. Furthermore, the court determined that neither deep vein thrombosis (DVT) nor the failure to provide a warning about the risk of DVT qualifies as an Article 17 accident.

## CONCLUSION

The central notion of “accident” within these standards has undergone careful examination, with courts frequently highlighting its unforeseen or exceptional character, originating from external events that impact passengers. The significance of this interpretation is crucial in differentiating between ordinary operating occurrences and accidents that meet the criteria for responsibility.

The commitment to passenger protection is underscored by the elucidation of the scope of liability in the Warsaw and Montreal Conventions. The treaties stipulate that to get compensation, passengers must demonstrate that physical harm has occurred as a direct consequence of an accident during any stage of an international flight. This provision provides a more efficient process for compensating passengers since it eliminates the need to establish negligence.

The examination of liability cases has shed light on the complex function fulfilled by airport operators, emphasising the importance of establishing their classification as either independent contractors or agents of air carriers. The differentiation between these two concepts can have a substantial influence on the resolution of legal issues about culpability. Furthermore, the paper examines instances of avian collisions and atmospheric disturbances, elucidating the parameters

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<sup>31</sup> *Hu v. Air China Limited*, Judgment No. 399/2009 of January 7, 2009, Tribunal of Busto Arsizio (Varse) in Case No. 1118 of 2007.

used to classify these occurrences as accidents. The crucial considerations in making such assessments are the unforeseen or exceptional characteristics of these events and their significant impact on passengers.

The investigation has also encompassed health-related concerns, including the effects of smoking on board and the occurrence of deep vein thrombosis (DVT). The research highlights the requirement for an incident to meet specific criteria to be classified as an accident. Specifically, it must originate from an external source rather than being caused by an internal reaction of a passenger to a pre-existing ailment. Moreover, the paper examines the crucial elements of recourse and limitation of liability, which are key constituents of these agreements. These mechanisms enable air carriers to pursue legal recourse against third parties who may have played a role in causing damages, while also setting limits on responsibility to safeguard the long-term viability of the airline business.

Based on the aforementioned discoveries, it is apparent that international aviation law, which is regulated by the Warsaw and Montreal Conventions, aims to establish a complete structure for handling matters of liability in the realm of air transportation. The aforementioned accords aim to achieve a delicate equilibrium by both protecting the rights of passengers and ensuring the sustainability of the aviation sector. Nevertheless, it is crucial for stakeholders in the aviation industry, such as passengers, carriers, and regulatory entities, to consistently observe and adjust to the ever-changing difficulties and legal interpretations. Additionally, it is necessary to conduct additional research and analyse legal precedents to effectively tackle new concerns, such as those about advancing technologies and shifting passenger demands. By adopting a flexible approach and adhering to the principles of equity and responsibility, the global aviation community can guarantee the continued efficacy of these conventions as effective mechanisms for managing liability issues within a continuously changing worldwide sector.