

INTERNATIONAL AIR LAW – P. III

(LIABILITY OF AIR CARRIER/PASSENGERS RIGHTS)

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TYPES OF LIABILITY

PASSENGERS TRANSPORT TRENDS

- ▶ Rise of the NUMBER of passengers (4,3 billion in 2018) > rise of the demand
- ▶ Rise of the number of direct international FLIGHTS > international competition



Capacity issues: airports-bottlenecks, delays, economic loss, safety issues, environmental issues (pollution)

international

Warsaw system (1929 Convention + protocols)

Montreal Convention 1999

EU

Regulation 2027/97 (as amended with 889/2002)

* Regulation 261/2004

WARSAW CONVENTION, 1929

- CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR

- In force since 1933, counting 152 parties

- application: international carriage performed by aircraft—of persons, baggage, or cargo—for reward or gratuitous, IF:

- A) place of departure and destination are in *different state parties*, OR

- B) place of departure and destination are *inside the territory of one state party*, but there is an agreed stopping place within the territory of another state (*roundtrip*) which does not have to be a party to the C.

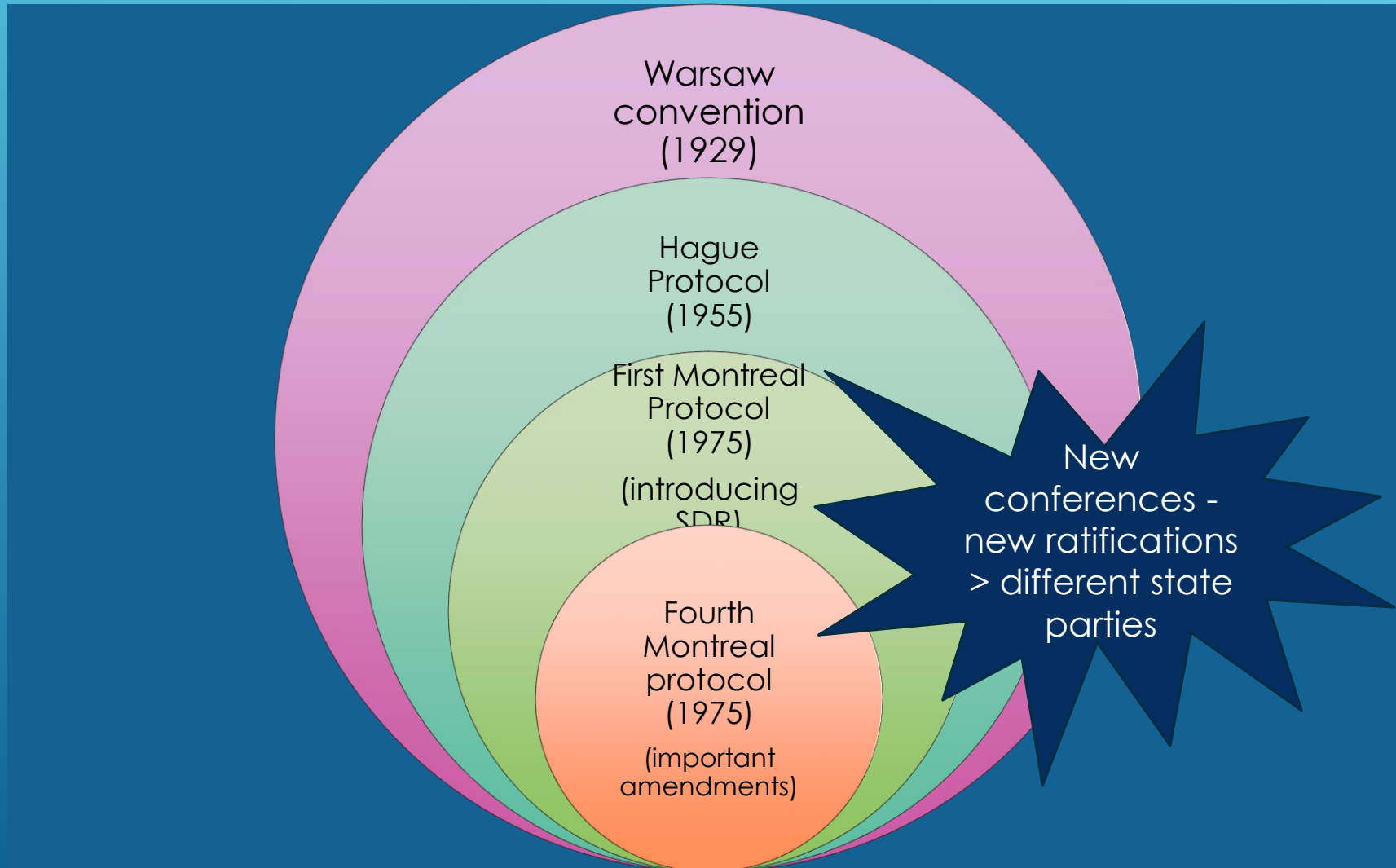
Liability of the carrier

...is liable for “damage sustained” as the result of “bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any operations of embarking or disembarking

–presumed liability> exoneration(art. 20): „...all necessary measures to avoid the damage or that it was impossible for him/them to take such measures”

–Limitedliability125.000 francs (approx. 9 000 USD)

WARSAW CONVENTION + PROTOCOLS



- ▶ Global application , on all flights of IATA air carrier members that signed to the agreement
- ▶ Stricter criteria for carrier's liability :
 - ▶ strict liability up to 100 000 SDR proven damage +
 - ▶ presumed fault to full amount ! = unlimited liability if proven) > **introducing 2 tier liability system**

IATA INTERCARRIER AGREEMENT KUALA LUMPUR, 1995

EU IN REPLY

▶ **Regulation 2027/97**

- ▶ unlimited liability for death and bodily injury of passenger under same
 - ▶ in case of death: advance payment 15 000 SDR
 - ▶ compulsory insurance of air carrier > Regulation 785/2004+ 285/2010 (amend.)
- ▶ + R 889/2002 amend.)amend.):
- ▶ principles of Montreal Convention applied to all „Community carriers“, regardless of where air carriage is taking place

MONTREAL CONVENTION 1999

- ▶ CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR
- ▶ In force since 2003 (Croatia since 2008)
- ▶ Multilateral international agreement : 136 state parties
- ▶ accepting solutions that already exist in practice > eased the ratification procedure
- ▶ problem of having 2 liability systems, both widely accepted > many states remained bound with Warsaw C. as well

application

- international carriage of persons , baggage or cargo performed by aircraft (for reward gratuitous) where:

A) departure and destination , regardless if there is a break or a transshipment , are situated within the territories of two state parties , OR

B) Within the territory of one state party if there is, under the carriage contract , an agreed stopping place within the territory of another state, even if that state is not a state party to Montreal C.

liability of air carrier for bodily injuries and death of passengers

TWO TIER liability system:

- strict liability 128 821 SDR*
 - exoneration: carrier must prove that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation
 - compulsory insurance up to the same amount adequate
- presumed fault no limitation
 - exoneration : carrier must prove (a) damage was not due to the negligence or other wrongful act or omission of his ; or b) such damage was solely due to the negligence or other wrongful act or omission of a third party

accident that caused the death injury must take place on board the aircraft or in the course of embarking/ disembarking*


- advance payments:
 - if required by national law
 - meeting the immediate economic needs
 - does not constitute a recognition of liability
 - may be offset against any amounts subsequently paid as damages
- Art . 24 Review of limits
 - inflation factor corresponds to the accumulated rate of inflation since the previous revision the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the SDR); min. 10 percent rate
 - tacit procedure effective 6 months after its notification to states Parties



PASSENGERS RIGHTS IN THE EU



REGULATION 261/2004

- ▶ In cases of...
 - ▶ **Long delay**
 - ▶ **Flight cancellation**
 - ▶ **Denied boarding (overbooking)**
 - ▶ Applicable if...
 - ▶ your flight is within the EU and is operated either by an EU or a non-EU airline
 - ▶ your flight arrives in the EU from outside the EU and is operated by an EU airline
 - ▶ your flight departs from the EU to a non-EU country operated by an EU or a non-EU airline
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CANCELLATION

- ▶ No definition (*case-law)
- ▶ No right to compensation according to Regulation (only right to reimbursement and right to care)

LONG DELAY

- ▶ „cancellation" means the non-operation of a flight which was previously planned and on which at least one place was reserved
- ▶ right to compensation in accordance with Art.7
 - ▶ flight distance (250-600 EUR)
 - ▶ Re-routing
 - ▶ Extraordinary circumstances

CANCELLATION VS. LONG DELAY

DIFFERENTIATION

Case C 402/07 Sturgeon v. Condor Flugdienst GmbH and C 432/07 Böck and Lepuschitz v. Air France

„ (...) A flight which is delayed, irrespective of the duration of the delay, even if it is long, **cannot be regarded as cancelled where there is a departure in accordance with the original planning.**„ (at 34)


„ (p)assengers whose flights have been cancelled and passengers affected by a flight delay suffer similar damage, consisting in a loss of time, and thus find themselves in comparable situations for the purposes of the application of the right to compensation... ” (at 54) (...) cannot be treated differently without the principle of equal treatment being infringed (...)” (at 60)

In those circumstances, the Court finds that **passengers whose flights are delayed may rely on the right to compensation laid down in Article 7 of Regulation No 261/2004** where they suffer, on account of such flights, a loss of time equal to or in excess of three hours, that is to say **when they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier** (at 61)

- “In order to alleviate such unequal treatment, **Regulation No 261/2004 must be interpreted as meaning that passengers whose flights are the subject of long delay may receive the same compensation**, namely that laid down in Article 5(1)(c)(iii) of that regulation, as passengers whose flights are cancelled (see *Sturgeon and Others*, paragraph 61)” (at 38)
- “...Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier. “ (at 40)

(C-581/10 Nelson and Others v Deutsche Lufthansa AG and C-629/10 TUI Travel and Others v Civil Aviation Authority)

ENFORCEMENT

1. Air carrier (Tour operator)
 2. National enforcement body (civil aviation authority or transport ministry)
 3. Court
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	Denied boarding	Flight cancellation	Flight delay > 5 hours	Flight delay <5 hours
Compensation	YES	YES*	NO	NO
Re-routing OR reimbursement**	YES	YES	YES	NO
Care (food, drinks, hotel, transport, phone, fax, e-mail)	YES	YES	YES	YES
<ul style="list-style-type: none"> * Extraordinary circumstances ** full cost of the ticket at the price at which it was bought, for the part of the journey not made, and for the part already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan 				

CASE LAW

- **C 432/07 and 402/07 (Sturgeon)**
 - the same compensation as in case of a flight cancellation
- **C-581/10 and C-629/10 (Nelson)**
 - obligation to compensate delayed passengers falls outside the scope of montreal convention, but remains additional to the system for damages laid down by it
- **C-11/11 (Folkerts)**
 - only the delay at the final destination of the journey is relevant for the right to compensation
- **C-549/07 (Wallentin-Hermann)**
 - Concept of “extraordinary circumstances” - technical problem which comes to light during aircraft maintenance or is caused by failure to maintain an aircraft cannot be regarded as such

CASE LAW (CONT.'D)

- ▶ **C-22/11 (Finnair)**

- ▶ concept of 'denied boarding' - not only overbooking but also cases where boarding is denied on other grounds, such as operational reasons

- ▶ **Case C-83/10 (Sousa Rodríguez)**

- ▶ concept of "cancellation" - covers the case where the aircraft took off but, for whatever reason, was subsequently forced to return to the airport of departure where the passengers of the said aircraft were transferred to other flights.

Etc.