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A Comparative Study on International Convention and National Legislation Relating to the Liability of the Air Carrier*

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I. Introduction

Air transport has become the principal means of transporting passengers over long distances. At the same time, the aircraft carries a considerable amount of cargo. The Warsaw Convention for the Unification of Certain Rules Relating to International Carriage was adopted in 1929, and the Convention established the principle of the

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air carrier's liability for damage caused to passenger, baggage and cargo, and for damage caused by delay.

The Warsaw Convention had to be amended or added in order to be kept up to date. The amendments and additions are the Hague Protocol of 1955, the Guadalajara Convention of 1961, the Montreal Agreement of 1966, the Guatemala Protocol of 1971, the Montreal Additional Protocols No.1, No.2, No.3 and No.4 of 1975, and the Montreal Convention of 1999. In 1999, the ICAO adopted the Montreal Convention for the Unification of Certain Rules for International Carriage by Air vastly modernizing the unification of private air law. The Montreal Convention will replace the instruments of the "Warsaw System", and came into force on 4 November 2003.

The Montreal Convention is not only an international convention. It has also exercised a considerable influence on national legislation. A number of states have adopted into their legislation the entire text of the Convention, or certain of its principles, with the object of regulating their national air transport.

Air transport must submit to intense regulation. Various requirements motivate state's intervention and explain the desire on the part of states to keep air transport under strict control.

Various national laws include provisions relating to the status of the aircraft, to commercial or sports use of aircraft, to damage that may be caused to third parties on the surface, to aerial navigation, to the status of the airline companies, to the contract of carriage, and to the status of the navigating personnel. The scope of the legislative and regulatory texts differs. Further, the field of liability can, even under the most important systems of law, be treated in different ways.

The purpose of this paper is to review the text of national legislation relating to the carrier's liability in respect of the carriage of passengers, baggage and cargo by air in major states such as United Kingdom,

Germany, France, Canada, Russia and China, and to compare the air carrier's liability under the national laws of above states with them under the Warsaw system relating to the international carriage by air. Also this paper reviews the text of the draft legislation relating to the carrier's liability in respect of the carriage by air in Korea.

The previous studies on international convention and national legislation relating to the liability of the air carrier are as follows: Paul Stephen Dempsey and Michael Milde (2005) commented on the evolution of the regime of liability from Warsaw to Montreal, liability of the carrier and extent of compensation for damage (Montreal Convention Chapter III), and carriage by air performed by a person other than the contracting carrier (Montreal Convention Chapter V).¹⁾ Doo Hwan Kim (2006) commented on national legislations relating to the liability of the air carrier of United Kingdom, United States, Canada, European Union, Germany, France, Italy, Switzerland, Australia, Japan, China, Taiwan and North Korea, and the analysis of the texts of the national legislations relating to aviation of all countries of the world.²⁾ June Sun Choi (2008) researched on the basic principles of legislation of the Part VI Carriage by Air of the Commercial Code of Korea, main texts of draft legislation, and main issues on draft legislation.³⁾

Such previous studies research on the liability regime of the air carrier in respect of the carriage of passenger, baggage and cargo

1) Paul Stephen Dempsey and Michael Milde, *International Air Carrier Liability: the Montreal Convention of 1999*, McGill University Institute of Air & Space Law, 2005.

2) Doo Hwan Kim, "National Legislations of All Countries of the World Relating to the Liability of the International Air Carrier", *Aviation Development*, Vol.39, Korea Civil Aviation Development Association, 2005.

3) June Sun Choi, "Main Issues on Draft Legislation of the Part VI Carriage by Air of the Commercial Code", *Proceedings of Symposium on Main Issues on International Air Transport and Countermeasures of Korean Enterprises*, Korea International Trade Law Association and Korean Association of Air and Space Law, 26 September 2008.

under the Warsaw system and national legislations of major states including Korea. Meanwhile, this paper differs from the previous studies in such aspect that it focuses on the comparison of the liability of the air carrier under the international conventions such as the Warsaw system and national legislations of major states.

II. International Conventions Relating to the Liability of Air Carrier

1. The Composition of Warsaw System

It was the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air of 1929, which firmly established and elaborated the principle of the air carrier's liability for damage caused to passengers, baggage and good, and for damage caused by delay. The rules of the Warsaw Convention have applied all over the world and have demonstrated their reliability and usefulness. As time went by and aviation began expanding on a large scale, the Warsaw Convention had to be amended or added to on a number of occasions in order to be kept up to date. The amendments and additions are the following:⁴⁾

- (a) The Hague Protocol of 1955. It was added to the Warsaw Convention with the aim of adapting it to the demands of modern transport.
- (b) The Guadalajara Convention of 1961 for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier. The amendment took

4) I. H. Ph. Diederiks-Verschoor, *An Introduction to Air Law*, Eighth revised edition, Kluwer Law International, 2006, pp.101-102.

the form of a Supplementary Convention because it was concluded to deal with an entirely new subject-matter, namely chartering.

- (c) The Guatemala Protocol of 1975 was meant to be an amendment to the Warsaw Convention.
- (d) The Montreal Additional Protocols No.1, No.2, No.3 and No.4 of 1975 were meant to be an amendment to the Warsaw system.
- (e) The Montreal Agreement of 1966. A private agreement was concluded between IATA carriers and the United States Civil Aeronautics Board.

The basic Convention of Warsaw and the amendments listed above are called "the Warsaw System".

2. The Liability of the Carrier under the Montreal Convention

In 1999, the ICAO adopted the Montreal Convention for the Unification of Certain Rules for International Carriage by Air vastly modernizing the unification of private air law. The Montreal convention will replace the instruments of the "Warsaw System", and came into force on 4 November 2003.⁵⁾

Chapter III of the Montreal Convention deals with the regime of liability of the air carrier, and the quantum of compensatory damages payable.

(1) The Liability Regime of the Carrier

The Montreal Convention represents important modernization compared with the "Warsaw System", introducing, in the first tier, strict liability of the carrier, and in the second tier, without a monetary limit, a presumption of fault on the part of the carrier with a reversed burden of proof.

The main feature of the liability regime of the carrier under the

5) Paul Stephen Dempsey, Michael Milde, *op.cit.*, p.viii.

Montreal Convention is the two-tier liability system for death or wounding of the passenger with strict liability up to 100,000 SDR and presumptive liability (with a reversed burden of proof) without any limit above that threshold—although restricted to compensatory damages for bodily injury resulting from an accident, to the explicit exclusion of punitive, exemplary or any other non-compensatory damages.⁶⁾

As the carrier is aware of this limit in advance, he will be able to arrange for sufficient insurance cover. It is to be noted, however, that the possibility for the carrier to exonerate himself for damage over 100,000 SDR is often merely theoretical. Cases may occur where the exact cause of an accident may never become known. In such situations the carrier will not be able to supply the necessary proof and hence will be liable without any limit.⁷⁾

(2) Liability for Death and Injury of Passengers and Damage to Baggage

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 disembarking⁸⁾.

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 caused 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. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage

6) Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.41.

7) I. H. Ph. Diederiks-Verschoor, *op. cit.*, pp.175-176.

8) Montreal Convention, Article 17 paragraph 1.

resulted from its fault or that of its servants or agents⁹⁾.

In *Eastern Airlines v. Floyd*, the U.S. Supreme Court held that Article 17 does not allow recovery for purely mental injuries.¹⁰⁾

(3) Liability for Damage to Cargo

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.¹¹⁾

However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following: (a) inherent defect, quality or vice of that cargo; (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents; (c) an act of war, or an armed conflict; (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.¹²⁾

In *Magnus Electronics, Inc. v. Royal Bank of Canada*, the court held that so long as the goods remain in the air carrier's actual or constructive possession pursuant to the terms of the carriage contract, the period of transportation by air does not end.¹³⁾

(4) Liability for Delay in Carriage of Passenger, Baggage and Cargo

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

9) Montreal Convention, Article 17 paragraph 2.

10) *Eastern Airlines v. Floyd*, 499 U.S. 530, 111 S.Ct. 1489(1991); Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.128.

11) Montreal Convention, Article 18 paragraph 1.

12) Montreal Convention, Article 18 paragraph 2.

13) *Magnus Electronics, Inc. v. Royal Bank of Canada*, 611 F. Supp. 436 at 438 N.D.III.1985); Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.172.

required to avoid the damage or that it was impossible for it or them to take such measures.¹⁴⁾

In *Mfrs. Hanover Trust Co. v. Alitalia Airlines*, the phrase “all necessary measures” has been defined as “all precautions that in sum are appropriate to the risk, i.e., measures reasonably available to defendant and reasonably calculated, in cumulation, to prevent the subject loss.”¹⁵⁾

(5) Exoneration of Liability of the Carrier

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 derives his right, 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. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.¹⁶⁾

A great difference with the Warsaw Convention is that the possibility for the carrier to exonerate himself if he proves that he had taken all necessary measures or that it was impossible for him to take these, has been deleted in the Montreal Convention in so far that this defence is only valuable in case of delay and baggage claims.¹⁷⁾

In *Chisholm v. TWA*, the injury of a passenger walking around the

14) Montreal Convention, Article 19.

15) *Mfrs. Hanover Trust Co. v. Alitalia Airlines*, 429 F. Supp. 964 at 967 (D.C.N.Y. 1977) ; Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.176.

16) Montreal Convention, Article 20

17) I. H. Ph. Diederiks-Verschoor, *op. cit.*, p.176.

plane in turbulence when the “fasten seat belt” sign was on, was recognized as the contributory negligence of the passenger.¹⁸⁾

(6) Compensation in Case of Death or Injury of Passengers

For damages arising paragraph 1 of Article 17 (death or bodily injury of a passenger) not exceeding 100,000 SDR for each passenger, the carrier shall not be able to exclude or limit its liability.¹⁹⁾

The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100,000 SDR if the carrier proves that: (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.²⁰⁾

The carrier’s liability under Article 21(1) sounds “absolute” and without any defense for up to 100,000 SDR. However the carrier may be relieved of liability even in the first (100,000 SDR) tier for the wrongful act of the claimant. In the second tier, the carrier is liable without any monetary limitation on the basis of presumed negligence with a reversed burden of proof.²¹⁾

(7) Limits of Liability in Relation to Delay, Baggage and Cargo

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 SDR.²²⁾

In the carriage of baggage, the liability of the carrier in the case

18) Chisholm v. TWA, 1963[1] L1LR626, 4 Avi 17, 247; Paul Stephen Dempsey and Michael Milde, *op. cit.*, pp.179–180.

19) Montreal Convention, Article 21 paragraph 1.

20) Montreal Convention, Article 21 paragraph 2.

21) Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.182.

22) Montreal Convention, Article 22 paragraph 1.

of destruction, loss, damage or delay is limited to 1,000 SDR for each passenger unless the passenger has made, at the time when checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.²³⁾

In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 SDR per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that sum is greater than the consignor's actual interest in delivery at destination..²⁴⁾

The foregoing provisions of paragraph 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.²⁵⁾

In *Ospina v. Trans World Airlines, Inc.*, wilful misconduct exists only where the airline omitted to do an act with knowledge that the omission of that probably would result in damage or injury, or in a manner that implied a reckless disregard of the probable consequences.²⁶⁾

23) Montreal Convention, Article 22 paragraph 2.

24) Montreal Convention, Article 22 paragraph 3.

25) Montreal Convention, Article 22 paragraph 5.

26) *Ospina v. Trans World Airlines, Inc.*, 975 F. 2d 35 at 37(2d Cir. 1992); Paul Stephen Dempsey and Michael Milde, *op. cit.*, pp.191-192.

(8) Advance Payments of Compensation in Death or Injury of Passengers.

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, makes advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Even today quite a number of carriers voluntarily make advance payment. However, passengers are sometimes reluctant to accept these as they fear to forfeit their rights to a complete compensation by accepting these advance payments.²⁷⁾

The root of this provision is in EC Regulation 2027/97, that imposed the duty on all "community carriers" to make such advance payments within specified time limit. In practice it may be very difficult for the carrier to determine, in a short period of time, who are the persons entitled to such advance and what may be their relative rights.²⁸⁾

(9) Limits of Liability of Servants or Agents of the Carrier

If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.²⁹⁾

The aggregate of the amounts recoverable from the carrier, its

27) I. H. Ph. Diederiks-Verschoor, *op. cit.*, p.177.

28) Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.203.

29) Montreal Convention, Article 30 paragraph 1.

servants and agents, in that case, shall not exceed the said limits.³⁰⁾

In *Reed v. Wisner*, Injured passengers may not, by litigating directly against airline employees, recover additional sums beyond those prescribed by the Warsaw Convention.³¹⁾

(10) Timely Notice of Complaints and Limitation of Actions

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 disposal.³²⁾

Every complaint must be made in writing and given or dispatched within the times aforesaid.³³⁾ If no complaint is made within the times aforesaid, no action shall against the carrier, save in the case of fraud on its part.³⁴⁾

The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.³⁵⁾

In *Moses v. Air Afrique*, the court dismissed passenger's untimely filed claim on grounds that, "the fact that airline personnel witnessed the destruction of the baggage does not obviate the requirement that the passenger make a formal written complaint to the carrier."³⁶⁾

30) Montreal Convention, Article 30 paragraph 2.

31) *Reed v. Wisner*, 555 F.2d 1079 at 1093(2d Cir. 1977), cert. denied, 434 U.S. 922(1977); Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.213.

32) Montreal Convention, Article 31 paragraph 2.

33) Montreal Convention, Article 31 paragraph 3.

34) Montreal Convention, Article 31 paragraph 4.

35) Montreal Convention, Article 35 paragraph 1.

(11) Jurisdiction of the Court

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 contract has been made or before the court at the place of destination.³⁷⁾

In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this article, or in the territory of a State Party in which at the time of the accident the passenger has his principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.³⁸⁾

The Montreal Convention adds a new fifth jurisdiction. The fifth jurisdiction is available for a suit for death or personal injury, but not available for cargo or baggage claims. What had been added by the fifth jurisdiction is the ability of a passenger traveling abroad to bring suit in his home country despite the fact that the ticket was purchased and travel completed abroad, aboard a foreign-flag carrier.³⁹⁾

(12) Liability of the Contracting Carrier and Actual Carrier

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this

36) *Moses v. Air Afrique*, 99 Civ. 541(JG), 2000 WL 306853(E.D.N.Y.Mar. 21, 2000); Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.215.

37) Montreal Convention, Article 33 paragraph 1.

38) Montreal Convention, Article 33 paragraph 2.

39) Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.221.

Convention, both the Contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.⁴⁰⁾

The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.⁴¹⁾

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within their scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.⁴²⁾

Article 44 originated in Article 6 of the Guadalajara Convention. It prohibits multiple recovery by the claimant of damage awards from the actual carrier, the contracting carrier, and their agents or servants. Thus the claimant may receive compensatory damages to enable it to achieve restitution, but no more.⁴³⁾

40) Montreal Convention, Article 40.

41) Montreal Convention, Article 41 paragraph 1.

42) Montreal Convention, Article 44.

43) Paul Stephen Dempsey and Michael Milde, *op. cit.*, p.237.

III. National Legislations Relating to the Liability of Air Carrier

1. Carriage by Air Act of United Kingdom

The purpose of the Carriage by Air Act 1961 is to give effect to the Convention concerning international carriage by air known as “the Warsaw Convention as amended at The Hague, 1955”, to enable the rules contained in that Convention to be applied, with or without modification, in other cases and, in particular, to non-international carriage by air; and for connected purposes.⁴⁴⁾

The applicable provisions of the Carriage by Air Conventions have the force of law in the United Kingdom in relation to any carriage by air to which they apply, irrespective of the nationality of the aircraft performing that carriage.⁴⁵⁾ The Carriage by Air Conventions are “the Warsaw Convention as amended at the Hague, 1955 (“the Hague Protocol”), “the Protocol No.4 of Montreal, 1975; and “the Montreal Convention, 1999.⁴⁶⁾

(1) Limitation of Liability

The limitation on liability of the carrier in the following provisions of the Conventions apply whatever the nature of the proceedings by which liability may be enforced: The provisions are Article 22 of the Warsaw Convention, Article 22 of the Warsaw Convention as amended at the Hague, 1955; and Articles 21 and 22 of the Montreal Convention.⁴⁷⁾

Article 21 and paragraph (1) of Article 22 of the Montreal Convention

44) Carriage by Air Act of United Kingdom, Preamble.

45) Carriage by Air Act of United Kingdom, Section 1(1).

46) Carriage by Air Act of United Kingdom, Section 1(5).

47) Carriage by Air Act of United Kingdom, Section 4(1A).

applies to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of any part of the United Kingdom, together with any proceedings brought against him outside the United Kingdom.⁴⁸⁾

(2) Notice of Partial Loss

The damage in the following provisions of the Conventions shall be construed as including loss of part of the baggage or cargo in question and the reference to the receipt of baggage or cargo shall, in relation to loss of part of it, be construed as receipt of the remainder of it: The provisions are Article 26(2) of the Warsaw Convention; Article 26(2) of the Warsaw Convention as amended at Hague, 1955; Article 31(2) of the Montreal Convention.⁴⁹⁾

(3) Contributory Negligence.

A court may exonerate the carrier wholly or partly from his liability under the Law Reform(Contributory Negligence) Act 1945 which is the law of the United Kingdom for the purpose of the following provisions of the Conventions: The provisions are Article 21 of the Warsaw Convention; The Warsaw Convention as amended at the Hague, 1955; Article 20 of the Montreal Convention.⁵⁰⁾

2. Air Transport Act of Germany⁵¹⁾

The Section 2 of the Air Transport Act of Germany provides for the liability of the carrier.

48) Carriage by Air Act of United Kingdom, Section 4(1B).

49) Carriage by Air Act of United Kingdom, Section 4A.

50) Carriage by Air Act of United Kingdom, Section 6.

51) Doo Hwan Kim, *op. cit.*, pp.54–59.

(1) Liability for Personal Damage

The carrier shall be liable for damage sustained in case of the death, bodily injury or damaged health of a passenger, if the accident took place on board the aircraft or in the course of any of the operation of embarking on or disembarking from the aircraft.

The liability of the carrier for each passenger is limited to a sum of 100,000 units of account; provided that if the damage was not caused by the illegal or negligent act or omission of the carrier or its servant, and if the damage was solely caused by the illegal or negligent act or omission of a third party, the above maximum amount of compensation applies equally in addition to the maximum amount of compensation which is paid as a form of pension.⁵²⁾

(2) Liability in Relation to Delay in the Carriage of Passengers

The carrier is liable for damage occasioned by delay in the carriage of passengers. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants 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. In the case of damage caused by delay in the carriage of passenger, the liability of the carrier for each passenger, is limited to a sum of 4,150 units of account, unless the damage is due to the wilful misconduct or gross negligence of the carrier or its servant in the course of the operation of air equipments.⁵³⁾

(3) Liability in Relation to Baggage.

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

52) Air Transport Act of Germany, Article 45 paragraphs 1 and 2.

53) Air Transport Act of Germany, Article 46.

event which caused the destruction, loss or damage took place on board the aircraft or during the period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage.⁵⁴⁾

The carrier is liable for damage occasioned by delay in the carriage of checked baggage which is on board the aircraft or during the period within which the checked baggage was in the charge of the carrier. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it and its servants 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.⁵⁵⁾

The carrier is liable for damage sustained in case of destruction or loss of, or damage to unchecked baggage or personal items if the damage resulted from its fault or that of its servant. In the case of delay in the carriage of unchecked baggage or personal items, the liability provision of the carrier in the case of delay in the carriage of checked baggage applies correspondingly.⁵⁶⁾

In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 units of account for each passenger unless the passenger has made, at the time when checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires.⁵⁷⁾

This provision of liability limitation shall not apply if the damage resulted from the wilful misconduct or gross negligence of the carrier or its servants in the course of the operation of equipments.⁵⁸⁾

54) Air Transport Act of Germany, Article 47 paragraph 1.

55) Air Transport Act of Germany, Article 47 paragraph 2.

56) Air Transport Act of Germany, Article 47 paragraph 3.

57) Air Transport Act of Germany, Article 47 paragraph 4.

58) Air Transport Act of Germany, Article 47 paragraph 5.

In the case of damage of checked baggage the passenger must complain in writing 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 delay of checked baggage the complaint must be made at the latest within twenty-one days from the date on which the checked baggage have been placed at the passenger's disposal. Nevertheless, this provision shall not apply if the carrier acted with malice.⁵⁹⁾ In the case of loss of checked baggage the complaint must be made if the carrier admitted the loss, or after twenty-one days from the date that the checked baggage should have been arrived.⁶⁰⁾

3. Civil Aviation Code of France

Part III of Civil Aviation Code of France provides for the air transport, including the carrier's liability for passengers, baggage and cargo.

(1) Liability of the Carrier for Cargo or Baggage.

The liability of the carrier for cargo or baggage is governed by, in the case of the carriage by air, the only provision of the Warsaw Convention 1929 or any amending agreement and applicable in France, even if the shipment is not international in the Warsaw convention.⁶¹⁾

For the purpose of Article 25 of Warsaw Convention, the fault considered to be equivalent to wilful misconduct is an inexcusable fault, and is the inexcusable deliberate fault involving an awareness of the likelihood of damage and its acceptance foolhardy without valuable reason. The fault under Article 26 paragraph 4 of the Warsaw Convention is one by which the carrier has concealed or attempted to conceal the damage, loss or delay, or by any other means prevented or attempted

59) Air Transport Act of Germany, Article 6 paragraph 6.

60) Air Transport Act of Germany, Article 47 paragraph 7.

61) Civil Aviation Code of France, Article L321-3.

to prevent the receiver to formulate his protests in a timely manner. The victim may likewise raise the bar provided for the text if it has been unable to formulate such protests by force majeure.⁶²⁾ The action for damages to the cargo or baggage shall be brought under the penalty of forfeiture within a period of two years from the date of arrival at the destination or from the date on which the aircraft ought to have arrived.⁶³⁾

(2) Liability of the Carrier for Passengers

The liability of the carrier for passengers is governed by the Warsaw Convention. However, the liability of the carrier for each passenger under Article 22 of Warsaw Convention is limited to 114,336.76 euros. If, due to an amendment to the Warsaw Convention, the limit of liability of the carrier is raised to a level higher than the figure above, the new limit shall be substituted for 114,336.76 euros from the entry into force for France to the amendment of the Convention. Furthermore, except that stipulates otherwise in the Convention, the liability of the carrier performing the gratuitous carriage shall be established within the limit mentioned above if the damage resulted from the fault of the carrier or its servants. The liability of the carrier may be pursued only under conditions and limits specified above, whoever requests the liability of the carrier and whatever qualification the claimant has.⁶⁴⁾

4. Carriage by Air Act of Canada⁶⁵⁾

The Carriage by Air Act is an Act to give effect to certain conventions

62) Civil Aviation Code of France, Article L321-4.

63) Civil Aviation Code of France, Article L321-5.

64) Civil Aviation Code of France, Article L322-3.

65) Doo Hwan Kim, *op. cit.*, pp.52-53.

for the unification of certain rules relating to international carriage by air. The Chapter C-26 of Carriage by Air Act provides for implementing Convention, liability under Convention for death of passenger, jurisdiction of Canadian courts and so on.

(1) Implementing Conventions

The provisions of the convention set out in Schedule I (Warsaw Convention 1929), Schedule III (Hague Protocol 1955), Schedule IV (Montreal Protocol No.4 1975), Schedule V (Guadalajara Convention 1961) and Schedule VI (Montreal Convention 1999), in so far as they relate to the rights and liabilities of carriers, carriers'servants and agents, passengers, consignors, consignees and other persons, have the force of law in Canada in relation to any carriage by air to which the provisions apply, irrespective of the nationality of the aircraft performing that carriage.⁶⁶⁾

(2) Liability under Convention for Death of Passenger

Any liability imposed by Article 17 of the Warsaw Convention or Article 17 of the Montreal Convention on a carrier in respect of the death of a passenger shall be in substitution for any liability of the carrier in respect of the death of that passenger under any law in force in Canada, and the provisions set out in Schedule II (Provisions as to liability of carrier in the event of the death of a passenger) shall have effect with respect to the persons by whom and for whose benefit the liability so imposed is enforceable and with respect to the manner in which it may be enforced.⁶⁷⁾

In the event of the death of a passenger, the liability of the carrier shall be enforceable for the benefit of such of the members of the

66) Carriage by Air Act of Canada, Section 2 paragraphs 1 and 2.

67) Carriage by Air Act of Canada, Section 2 paragraph 5.

passenger's family"member of the passenger's family⁶⁸⁾ as sustained damage by reason of the death of the passenger.⁶⁹⁾

An action to enforce the liability may be brought by (a) any person who, under the law in force in the province in which action is brought, is entitled to act or is recognized as the personal representative of the passenger (b) any person for whose benefit the liability is, under paragraph 1, enforceable; or (c) any person who, under the law in force in the province in which action is brought, is entitled to act or is recognized as the representative for any one or more of the persons for whose benefit the liability is, under paragraph 1, enforceable.⁷⁰⁾

5. Aviation Code of the Russian Federation

Chapter 17 of Aviation Code of the Russian Federation provides for the liability of the carrier, operator and consignor.

(1) General Principles of Liability

The carrier shall be liable to the passenger and cargo owner in the order established by the law of the Russian Federation, the international agreements, to which the Russian Federation is a party as well as the contract of passenger carriage, the contract of cargo transportation and the contract of mail transportation. The operator must reimburse the injury caused in operation of the aircraft if it fails to prove that the injury occurred due to force majeure or intent of the injured party. The carrier, passenger, consignor and consignee shall be liable

68) "member of the passenger's family" means the passenger's spouse or a person who was cohabiting with the passenger in a conjugal relationship for a period of at least one year immediately before the death of the passenger, a parent, step-parent, grandparent, brother, sister, child, adopted child, stepchild, grandchild, or any person for whom the passenger stood in the place of a parent: Carriage by Air Act of Canada, Schedule II paragraph 1.

69) Carriage by Air Act of Canada, Schedule II paragraph 1.

70) Carriage by Air Act of Canada, Schedule II paragraph 2.

for violation of customs, currency, sanitation, quarantine and other rules in compliance with laws, of the Russian Federation.⁷¹⁾

(2) Liability of the Carrier for Causing Injury to Life or Health of the Passenger of the Aircraft

The Liability of the carrier for the injury caused to life or health of the passenger of the aircraft in operation of the aircraft shall be determined in compliance with the rules of Chapter 59 of the Civil Code of the Russian Federation, if the law or the contract of carriage of the passenger does not stipulate a higher amount of liability of the carrier as well as by the international agreements to which the Russian Federation is a party.⁷²⁾

(3) Liability of the Carrier for Loss, Shortage or Damage to Baggage, Cargo or Luggage of the Passenger

The carrier shall be liable for the loss, shortage or damage to the baggage or cargo after acceptance for carriage and until delivery to the consignee or until transfer to another citizen or legal entity in compliance with the established rules, if the carrier does not prove that all necessary measures for preventing such damage from being caused have been taken or that it was impossible to take such measures.⁷³⁾

The carrier shall be liable for the loss, shortage or damage to the baggage or cargo, if it fails to prove that they were not a result of act or omission performed intentionally by the carrier or that they did not occur during the carriage.⁷⁴⁾

The carrier shall be liable for the safety of the luggage of the passenger, if it fails to prove that the loss, shortage or damage to

71) Aviation Code of the Russian Federation, Article 116.

72) Aviation Code of the Russian Federation, Article 117 paragraph 1.

73) Aviation Code of the Russian Federation, Article 118 paragraph 1.

74) Aviation Code of the Russian Federation, Article 118 paragraph 3.

these things occurred due to circumstances which the carrier could not prevent and elimination of which did not depend on the carrier or was due to intent of the passenger.⁷⁵⁾

(4) Amount of Compensation by the Carrier for Loss, Shortage or
Damage to Baggage, Cargo or Luggage of the Passenger

The carrier shall be liable for the loss, shortage or damage to the baggage, cargo or luggage of the passenger in the following amounts: (a) for loss, shortage or damage to the baggage or cargo accepted for transportation with declared value: in the amount of declared value; (b) for loss, shortage or damage to the baggage or cargo accepted for carriage without declared value: in the amount of its value but not in excess of two minimum amounts of payment for labour for one kilogram of baggage or cargo weight established by the federal law; (c) for loss, shortage or damage to the luggage of the passenger: in the amount of their values; and if it is impossible to determine their value: in the amount not exceeding ten minimum amounts of payment for labour established by the federal law.⁷⁶⁾

For loss, shortage or damage to the baggage, cargo or the luggage of the passenger in the international carriage the carrier shall be liable in accordance with the international agreements to which the Russian Federation is a party.⁷⁷⁾

(5) Liability of the Carrier for Delay in Carriage of Passenger,
Baggage or Cargo

For the delay in carriage of a passenger, baggage or cargo to the point of destination the carrier shall pay a penalty in the amount of twenty

75) Aviation Code of the Russian Federation, Article 118 paragraph 2.

76) Aviation Code of the Russian Federation, Article 119 paragraph 1.

77) Aviation Code of the Russian Federation, Article 119 paragraph 3.

five percent of the minimum amount for labour for every overdue hour but not in excess of fifty percent of freight payment, if the carrier fails to prove that the delay took place due to force majeure, elimination of aircraft fault threatening the life or health of the passengers of the aircraft, or due to other circumstances not depending on the carrier.⁷⁸⁾

(6) Agreements on Increase of Liability Limits of the Carrier

The carrier has the right to make agreements with passengers, consignors or consignees on increasing its liability limits as compared with the limits established by the Code or by the international agreements to which the Russian Federation is a party.⁷⁹⁾

6. Civil Aviation Law of the People's Republic of China⁸⁰⁾

Chapter IX Section 3 of Civil Aviation Law of the People's Republic of China provides for the liability of the carrier.

(1) Liability of the Carrier for Death or Injury of a Passenger

The carrier shall be liable for the death or personal injury of a passenger, if the accident took place on board the civil aircraft or in the course of any of the operations of embarking on or disembarking from the civil aircraft ; provided that the carrier is not liable if the death or injury resulted solely from the state of health of the passenger.⁸¹⁾

78) Aviation Code of the Russian Federation, Article 120.

79) Aviation Code of the Russian Federation, Article 124.

80) Doo Hwan Kim, *op. cit.*, pp.65–69.

81) Civil Aviation Law of the People's Republic of China, Article 124.

(2) Liability of the Carrier for Destruction, Loss or Damage of
Baggage or Cargo

The carrier shall be liable for the destruction or loss of, or damage to, any carry-on articles of the passenger, if the occurrence took place on board the civil aircraft or in the course of any of the operations of embarking on or disembarking from the civil aircraft of the passenger. The carrier shall be liable for the destruction or loss of, or damage to any checked baggage of the passenger, if the occurrence took place during the transport by air.

The carrier shall not be liable for the destruction or loss of, or damage to, any carry-on articles or checked baggage of the passenger if such destruction or loss or damage resulted solely from the inherent defect, quality or vice of the baggage.

The carrier shall be liable for the destruction or loss of, or damage to, any cargo if the occurrence took place during the transport by air; provided that the carrier is not liable if he proves that the destruction or loss of, or damage to the cargo resulted solely from one or more of the following: (a) Inherent defect, quality or vice of that cargo; (b) Defective packing of that cargo performed by a person other than the carrier or his servants or agents; (c) An act of war or an armed conflict; or (d) An act of public authority carried out in connection with the entry, exit or transit of the cargo.⁸²⁾

(3) Liability of the Carrier for Delay in Carriage of Passenger, Baggage
or Cargo.

The carrier shall be liable for damage occasioned by delay in the carriage by air of passenger, baggage or cargo; provided that the carrier is not liable if he proved that his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for

82) Civil Aviation Law of the People's Republic of China, Article 125.

him to take such measures.⁸³⁾

(4) Exoneration of Liability of the Carrier.

In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the fault of the claimant, the carrier may be wholly or partly exonerated from his liability in accordance with the extent of the fault that caused or contributed to such damage.

In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to the fault of the person claiming compensation, or the person from whom he derived his right, the carrier shall be wholly or partly exonerated from his liability in accordance with the extent of the fault that caused or contributed to such damage.⁸⁴⁾

(5) Limit of the Carrier; Liability in Domestic Air Carriage

The limits of carrier's liability in domestic air carriage shall be formulated by the competent civil aviation authority under the State Council and put in force after being approved by the State Council.⁸⁵⁾

(6) Liability of the Carrier in International Air Carriage

In international air carriage, the liability of the carrier shall be as follows: (a) the liability of the carrier for each passenger is limited to the sum of 16,600 units of account. Nevertheless, the passenger may agree with the carrier in writing to a limit of liability higher than that prescribed by this sub-paragraph; (b) the liability of the carrier for each kilogram of checked baggage or cargo is limited to a sum of 17 units of account. If the passenger or shipper has made, at the

83) Civil Aviation Law of the People's Republic of China, Article 126.

84) Civil Aviation Law of the People's Republic of China, Article 127.

85) Civil Aviation Law of the People's Republic of China, Article 128.

time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires, the carrier shall be liable to pay a sum not exceeding the declared sum, unless he proves that the sum declared by the passenger or shipper is greater than the actual interest of the checked baggage or cargo in delivery at destination; (c) the liability of the carrier for carry-on baggage of a passenger is limited to 332 units of account per passenger.⁸⁶⁾

7. Draft Revision of the Part VI the Carriage by Air of the Commercial Code of Korea.

Now the Ministry of Justice of Korea is proceeding to make the national legislation of the Part VI the Carriage by Air Commercial Code of Korea.⁸⁷⁾ The draft revision of the part VI the carriage by Air of the Commercial Code of Korea has the provisions on the liability of the air carrier for the death or injury of passenger, damage to baggage, and damage to cargo. The draft revision of the Commercial Code has adopted the principles of the liability of the air carrier under the Montreal Convention of 1999.

(1) General Principles of Liability of the Carrier⁸⁸⁾

(a) Exoneration of liability of the carrier: 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

86) Civil Aviation Law of the People's Republic of China, Article 129.

87) Ministry of Justice, The Legislation Notice of the Draft Revision of the Part VI the Carriage by Air of the Commercial Code of Korea, <http://www.moj.go.kr>, 6 August 2008.

88) Draft Revision of the Part VI the Carriage by Air of the Commercial Code of Korea, Articles 898-903.

the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from its liability to the extent that such negligence or wrongful act or omission caused or contributed to the damage (Article 898 of Draft Revision). This provision has adopted Article 20 of Montreal Convention.

(b) Application to claims in non-contract and so on: Provisions in relation to the liability of the carrier under this Chapter apply to the liability for compensation for damages caused by tort of the carrier (Article 899 paragraph 1 of Draft Revision). This provision has adopted Article 29 of Montreal Convention.

If the claims for damages to passenger, baggage or cargo is brought against a servant or agent of the carrier, if the damage is caused in respect of the performance of duties of the servant or agent, the servant or agent shall be entitled to avail themselves of the pleas and limits of liability which the carrier is entitled to invoke. Nevertheless, save in respect of cargo, this provision shall not apply if the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that the death, injury or delay of passenger and the loss, damage or delay of baggage would probably result (Article 899 paragraph 2 of Draft Revision). This provision has adopted Article 30 paragraph 1 and 3 of Montreal Convention.

The aggregate of the amounts of limits of liability of the carrier, its servants and agents for passenger, baggage and cargo shall not exceed the limits prescribed in Articles 905, 907, 910 and 915 (Article 899 paragraph 3 of Draft Revision). This provision has adopted Article 30 paragraph 2 of Montreal Convention.

(c) Claims against the actual carrier: The provisions in relation to the liability of the carrier under this Chapter apply to the carriage

performed by the actual carrier in the case of claim for damages against the actual carrier performed the whole or part of the carriage by virtue of authority from the contracting carrier, but is not with respect to the successive carrier under Article 901 (Article 900 paragraph 1 of Draft Revision). This provision has adopted Article 39 of Montreal Convention. The aggregate of the amounts of limits of liability of the contracting carrier, actual carrier and its servants and agents for passenger, baggage and cargo shall not exceed the limits prescribed in Articles 905, 907, 910 and 915 (Article 900 paragraph 3 of Draft Revision). This provision has adopted Article 44 of Montreal Convention.

(d) Successive carrier: In the case of carriage to be performed by various successive carriers, each carrier is deemed to be one of the parties to the contract of carriage in relation to that part of the carriage performed by each carrier (Article 901 paragraph 1 of Draft Revision). This provision has adopted Article 36 paragraph 1 of Montreal Convention. If the first carrier or the last carrier compensates damage, such carrier has a right of recourse against the carrier which performed the carriage during which the death, injury or delay of passenger, and the loss, damage or delay of baggage or cargo took place (Article 901 paragraph 5 of Draft Revision). This provision has adopted Article 37 of Montreal Convention.

(e) Extinguishment of liability of the carrier: The Liability of the carrier for passenger, consignor or consignee shall be extinguished, however founded, if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped (Article 902 of Draft Revision). This provision have adopted Article 35 paragraph 1 of Montreal Convention.

(f) Invalidity of contractual provisions: Any contractual provisions tending to relieve the carrier or to fix a lower limit than that which is applicable according to this chapter shall be null (Article 903 of Draft Revision). This provision has adopted Article 47 of Montreal Convention.

(2) Liability of the Carrier for Death and Injury of Passenger⁸⁹⁾

(a) Liability of the carrier: The carrier is liable for damage sustained in the 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 (Article 904 of Draft Revision). This provision has adopted Article 17 paragraph 1 of Montreal Convention.

(b) Limit of liability of the carrier: For damages arising under Article 904 not exceeding 100,000 units of account, the carrier shall not be able to exclude or limit its liability. The carrier shall not be able for damages arising under Article 904 to the extent that they exceed for each passenger 100,000 units of account if the carrier proves that (i) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or (ii) such damage was solely due to the negligence or other wrongful act or omission of a third party (Article 905 of Draft Revision). This provision has adopted Article 21 of Montreal Convention.

(c) Advance payments: In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall make advance payments without delay to natural persons who are entitled to

89) Draft Revision of the Part VI the Carriage by Air of the Commercial Code of Korea, Articles 904–907.

claim compensation. Such advance payments shall not constitute a recognition of liability. Advance payments may be offset against any amounts paid as damages by the carrier (Article 906 of Draft Revision). This provision has adopted Article 28 of Montreal Convention.

(d) Liability for delay: The carrier is liable for damage occasioned by delay in the carriage of passengers. In this case, the liability of the carrier for each passenger is limited to 4,150 units of account. The carrier shall not be liable for delay under paragraph 1 of this Article 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. The provision of paragraph 1 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result (Article 907 of Draft Revision). This provisions have adopted Article 19, Article 22 paragraph 1 and Article 22 paragraph 5 of Montreal Convention.

(3) Liability of the Carrier for Damage to Baggage⁹⁰⁾

(a) Liability for loss or damage to baggage: The carrier is liable for damage sustained by loss or damage to baggage during the carriage by air of baggage. The carrier is liable for damage sustained in the case of loss or damage to checked baggage on condition only that the event which caused the 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. However, the carrier is

90) Draft Revision of the Part VI the Carriage by Air of the Commercial Code of Korea, Articles 908–911.

not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, the carrier is liable if the damage resulted from its fault or that of its servants or agents (Article 908 of Draft Revision). This provision has adopted Article 17 paragraph 2 of Montreal Convention.

(b) Liability for delay in the carriage of baggage: The carrier is liable for damage occasioned by delay in the carriage by air of baggage. 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 (Article 909 of Draft Revision). This provision has adopted Article 19 of Montreal Convention.

(c) Limit of liability for baggage: In the case of damage to baggage under Article 908 and 909, the liability of the carrier is limited to 1,000 units of account for each passenger. Nevertheless, if the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination, the carrier will be liable to pay a sum not exceeding the declared sum, if it proves that the sum is greater than the passenger's actual interest in delivery at destination. The provision of paragraph 1 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants and agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result (Article 910 of Draft Revision). This provisions have adopted Article 22 paragraphs 2 and 5 of Montreal Convention.

(d) Notice in relation to loss or damage to part of baggage: If the passenger discovers loss or damage to part of checked baggage,

he must dispatch the notice of its outline in writing or by electronic document to the carrier without delay after the receipt of checked baggage. Nevertheless, if the loss or damage to checked baggage can not be discovered immediately, the notice must be dispatched within seven days from the date of receipt of checked baggage. In the case of delay, the complaint must be made within twenty-one days from the date on which the checked baggage has been placed at disposal (Article 911 of Draft Revision). This provision has adopted Article 31 paragraph 1 of Montreal Convention.

(4) Liability of the Carrier for Damage to Cargo⁹¹⁾

(a) Liability for loss or damage to cargo: The Carrier is liable for damage sustained by loss or damage to cargo upon condition only that the damage was sustained during the carriage by air. However, the carrier is not liable if it proves that the loss or damage to the cargo resulted from one or more of the following: (i) inherent defect, quality or vice of that cargo; (ii) defective packing of that cargo performed by a person other than the carrier or its servants or agents; (iii) an act of war or an armed conflict; (iv) an act of public authority carried out in connection with the entry, exit or transit of the cargo. The carriage by air under paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. However, if such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, such carriage is presumed, subject to proof to the contrary, to be within the period

91) Draft Revision of the Part VI the Carriage by Air of the Commercial Code of Korea, Articles 913–916.

of carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air (Article 913 of Draft Revision). This provisions have adopted 18 of Montreal Convention.

(b) Liability for delay: The carrier is liable for damage occasioned by delay in the carriage by air of 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 (Article 914 of Draft Revision). This provision has adopted Article 19 of Montreal Convention.

(c) Limit of liability for cargo: In the case of damage to cargo under Articles 913 and 914, the liability of the carrier is limited to a sum of 17 units of account per kilogram. Nevertheless, if the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination, the carrier will be liable to pay a sum not exceeding the declared sum, if it proves that the sum is greater than the consignor`s actual interest in delivery at destination. The weight to be taken into consideration in determining the amount to which the carrier`s liability is limited shall be only the weight of the package concerned. Nevertheless, when the loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air way bill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in Article 924, the weight of such package shall also be taken into consideration in determining the limit of

liability (Article 915 of Draft Revision). This provisions have adopted Article 22 paragraphs 3 and 4 of Montreal Convention.

(d) Notice in relation to loss or damage to part of cargo: If the consignee discovers loss or damage to part of cargo, he must dispatch the notice of its outline in writing or by electronic document to the carrier without delay after the receipt of cargo. Nevertheless, if the loss or damage to cargo can not be discovered immediately, the notice must be dispatched within fourteen days from the date of receipt of cargo. In the case of delay, the complaint must be made within twenty-one days from the date on which the cargo has been placed at disposal. If no complaint is made within the times under paragraph 1 of this Article, no action shall lie against the carrier, save in the case of fraud on its part (Article 916 paragraph 1 and 4 of Draft Revision). This provisions have adopted Article 31 paragraphs 2 and 4 of Montreal Convention.

IV. Comparison of the Liability of Air Carrier under International Conventions and National Legislations

1. Adoption of the Provisions Relating to the Liability of the Carrier under International Conventions into National Legislations

The Warsaw Convention is not only an international convention. It has also exercised a considerable influence on national legislation. Indeed, a number of states have adopted into their legislation the entire text of the Convention, or certain of its principles, with the object of regulating their national air transport.⁹²⁾

92) Nicolas Mateesco Matte, *International Air Transport*, Martinus Nijhoff Publishers, 1982, p.25.

The Montreal Convention of 1999 entered into force on November 4, 2003, and as of April 2008, is in force for eighty-six states. Korea has ratified the Montreal Convention, and brought it into force on December 19, 2007. The principles of the liability of the carrier under the Montreal Convention has been adopted into national legislations by United Kingdom, Germany, France, Canada, Russia and China. Also the draft legislation of the Part VI the Carriage by Air of Commercial Code of Korea has adopted certain principles of the liability of the carrier under the Montreal Convention.

The Carriage by Air Act of United Kingdom provides that the applicable provisions of the Warsaw Convention, the Hague Protocol, the Montreal Protocol No.4 and the Montreal Convention have the force of law in the United Kingdom in relation to any carriage by air to which apply (Section 1(1)).

The Air Transport Act of Germany provides that the applicable provisions of the Warsaw Convention, the Hague Protocol, the Guadalajara Convention and the Montreal Convention apply in relation to the liability of the carrier for the death, bodily injury, damaged health or delay in the carriage of the passenger, and the destruction, loss, damage or delay in the carriage of the baggage of the passenger (Article 44).

The Civil Aviation Code of France provides that the liability of the carrier for the passenger, baggage or cargo is governed by the Warsaw Convention and its amendments (Articles L321-3 and L322-3).

The Carriage by Air Act of Canada provides that the provisions of the Warsaw Convention, the Hague Protocol, the Montreal Protocol No.4 and the Montreal Convention, in so far as they relate to the liabilities of carriers, have the force of law in Canada in relation to any carriage by air to which the provisions apply (Section 2).

The Aviation Code of the Russian Federation provides that the carrier shall be liable to the passenger and cargo owner in the order established by the law of the Russian Federation, the international agreements, to

which the Russian Federation is a party as well as the contract of passenger carriage, the contract of cargo transportation and the contract of mail transportation (Article 116).

The Civil Aviation Law of the People's Republic of China provides has adopted certain principles of the liability of the carrier under the Montreal Convention (Articles 124–126).

2. Comparison of the Liability Limit of the Carrier under the International Conventions and National Legislations

In the field of liability of the carrier under national legislations, differences can also exist as to the maximum amount of liability. Certain countries limit the liability of the carrier, either by adopting the limit of liability of the carrier contained in the Warsaw Convention and its amendments or else by fixing a proper limit.

The national legislations of the United Kingdom, Germany, France, Canada, Russia and China provide the liability limit of the carrier as follows: The Carriage by Air Act of United Kingdom provides that the limitation on liability of the carrier in the provisions of Article 22 of the Warsaw Convention and the Hague Protocol, and Articles 21 and 22 of the Montreal Convention apply whatever the nature of the proceedings by which liability may be enforced (Section 4(1A)). For damages arising in the case of death or bodily injury of a passenger, the carrier shall not be able to exclude or limit its liability for damages not exceeding 100,000 SDR. And the carrier shall not be liable for damages to the extent that they exceed for each passenger 100,000 SDR if the carrier proves that: (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or (b) such damage was solely due to the negligence or other wrongful act or omission of a third party. In the case of damage caused by delay in the carriage of persons, the liability of the

carrier for each passenger is limited to 4,150 SDR. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 SDR for each passenger unless the passenger has made a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires.

The Air Transport Act of Germany provides that the liability limit of the carrier for the death, bodily injury, damaged health, or delay in the carriage of the passenger, and for the destruction, loss, damage or delay in the carriage of baggage of the passenger are the equal limit to those under the Montreal Convention (Articles 45–47).

The Civil Aviation Code of France provides that the liability of the carrier for each passenger under Article 22 of the Warsaw Convention is limited to 114,336.76 euros. If, due to an amendment to the Warsaw Convention, the limit of liability of the carrier is raised to a level higher than the figure above, the new limit shall be substituted for 114,336.76 euros from the entry into force for France to the amendment of the Convention (Article L322–3).

The Carriage by Air Act of Canada adopts the limit of liability of the carrier under Articles 21 and 22 of the Montreal Convention. The liability limit of the carrier for the death, bodily injury or delay in the carriage of the passenger, and for the destruction, loss, damage or delay in the carriage of baggage of the passenger are the equal limit to those under the Montreal Convention.

The Aviation Code of the Russian Federation provides that the liability of the carrier for the injury caused to life or health of the passenger shall be determined in compliance with the rules of Chapter 59 of the Civil Code of the Russian Federation, if the law or the contract of carriage of the passenger does not stipulate a higher amount of liability of the carrier as well as by the international agreements to which the Russian Federation is a party (Article 117). And the Aviation Code provides that the carrier shall be liable for the loss, shortage or damage

to the baggage, cargo or luggage of the passenger in the following amounts: (a) for loss, shortage or damage to the baggage or cargo accepted for carriage with declared value: in the amount of declared value; (b) for loss, shortage or damage to the baggage or cargo accepted for carriage without declared value: in the amount of its value but not in excess of two minimum amounts of payment for labour for one kilogram of baggage or cargo weight established by the federal law; (c) for loss, shortage or damage to the luggage of the passenger: in the amount of their values; and if it is impossible to determine their value: in the amount not exceeding ten minimum amounts of payment for labour established by the federal law (Article 119). And the Aviation Code provides that for the delay in the carriage of passenger, baggage or cargo to the point of destination the carrier shall pay a penalty in the amount of twenty five percent of the minimum amount for labour for every overdue hour but not in excess of fifty percent of freight payment (Article 120).

The Civil Aviation Law of the People's Republic of China provides that the limit of carrier's liability in domestic air carriage shall be formulated by the competent civil aviation authority under the State Council and put in force after being approved by the State Council (Article 128). And the Civil Aviation Law provides that in international air carriage, the liability of the carrier shall be as follows: (a) the liability of the carrier for each passenger is limited to the sum of 16,600 units of account. Nevertheless, the passenger may agree with the carrier in writing to a limit of liability higher than that prescribed by this sub-paragraph; (b) the liability of the carrier for each kilogram of checked baggage or cargo is limited to a sum of 17 units of account. If the passenger or shipper has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum, the carrier shall be liable to pay a sum not exceeding the declared sum; (c) the

liability of the carrier for carry-on baggage of a passenger is limited to 332 units of account per passenger (Article 129).

Table 1 presents the comparison of the liability limit of the carrier for the passenger and baggage under the Montreal Convention and national legislations.

<Table 1> Comparison of the Liability Limit of the Carrier for the
Passenger and Baggage

Montreal Convention	<ul style="list-style-type: none"> • Death or bodily injury of the passenger: 100,000 SDR for each passenger • Delay in the carriage of passenger: 4,150 SDR for each passenger • Destruction, loss, damage or delay in the carriage of baggage: 1,000 SDR for each passenger
Carriage by Air Act of United Kingdom	<ul style="list-style-type: none"> • Equivalent to the liability limit under the Montreal Convention
Air Transport Act of Germany	<ul style="list-style-type: none"> • Equivalent to the liability limit under the Montreal Convention
Civil Aviation Code of France	<ul style="list-style-type: none"> • Liability for each passenger under Article 22 of the Warsaw Convention : 114,336.76 euros
Carriage by Air Act of Canada	<ul style="list-style-type: none"> • Equivalent to the liability limit under the Montreal Convention
Aviation Code of the Russian Federation	<ul style="list-style-type: none"> • Injury caused to life or health of the passenger: Be determined in compliance with the rules of chapter 59 of the Civil Code of Russian Federation • Loss, shortage or damage to baggage: Two minimum amounts of payment for labour for one kilogram of baggage weight established by the federal law • Loss, shortage or damage to luggage: Ten minimum amounts of payment for labour • Delay in the carriage of the passenger or baggage: Twenty five percent of the minimum amount for labour for every overdue hour but fifty percent of not excess of freight payment

Civil Aviation Law of the People's Republic of China	<ul style="list-style-type: none"> • Liability for each passenger: 16,600 units of account • Liability for each kilogram of checked baggage: 17 units of account • Liability for carry-on baggage: 332 units of account per passenger
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V. Conclusion

On an international scale, the importance of the Warsaw system no longer requires emphasis. It remains the Warsaw system on international private law which has attracted the largest number of adherents. It covers and unifies five continents and various political, legal and social regimes under the same umbrella of legal principles. The fundamental objectives which this Warsaw system seeks to establish, demand a leveling off of the compensation awarded to certain victims.

Claimants save time and administrative complications are held to a minimum by the insertion of the principles of the Warsaw system into national legislation. It is, therefore, desirable that the principles be extended further by all states. Naturally, in view of the diversity of social and political regimes, it is sometimes difficult to achieve this objective.

On the whole, the Warsaw system has undergone many amendments, but its underlying spirit of unification and international cooperation has been preserved. The amendments have not changed the balance of interests which were of primary importance in 1929: protection for users, on the one hand, profitability and financial security for carriers, on the other hand.

In summary, the changes of the text of the Warsaw Convention have

only slightly affected the position of the carriers; they still seem to enjoy a satisfactory regime. At the same time, the position of the users has been notably improved. For their benefit, the maximum limits of compensation have been considerably increased; they can make use of an additional forum, where they are able to obtain the maximum compensation.

The Montreal Convention of 1999 is not only an international convention. It has also exercised a considerable influence on national legislation. Indeed, a number of states have adopted into their legislation the entire text of the Convention, or certain of its principles, with the object of regulating their national air transport. The principles of the liability of the air carrier under the Montreal Convention have been adopted into national legislations by the United Kingdom, Germany, France, Canada, Russia and China.

Now the Ministry of Justice of Korea is proceeding to make a new national legislation relating to the liability of the air carrier in respect of the carriage by air. The main principles of the liability of the air carrier under the Montreal Convention have been adopted into the draft legislation of the Part VI the Carriage by Air of the Commercial Code of Korea. However, there are some issues on the provisions relating to the advance payments by the carrier in the case of aircraft accidents resulting death or injury of passengers, and to the limit to the liability of the carrier for delay in the carriage of the passenger. Therefore, such provisions should be reconsidered.

The limitation of this paper is as follows: First, only eighty seven states of the world have adopted the Montreal Convention as of November 2008. So there are differences in the national legislations relating to the liability of the air carrier. Second, Korea has not the national legislation relating to the liability of the air carrier. So Korean government should proceed to the legislation of the Part VI the Carriage by Air of the Commercial Code as soon as possible.

In conclusion, the national legislation relating to the liability of the air carrier by the Ministry of Justice of Korea will contribute to settle efficiently the dispute on the carrier's liability in respect of the carriage of passengers, baggage and cargo by air, and to provide proper compensation to the passenger or consignor who has suffered damage, subject to the defenses and limitations it sets out.

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Air Transport Act of Germany

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Carriage by Air Act of United Kingdom

Carriage by Air Act of Canada

Civil Aviation Code of France

Civil Aviation Law of the People's Republic of China

ABSTRACT

A Comparative Study on International Convention and National Legislation Relating to the Liability of the Air Carrier

Lee, Kang Bin

The purpose of this paper is to review the text of national legislation relating to the carrier's liability in respect of the carriage of passengers, baggage and cargo by air in major states such as United Kingdom, Germany, France, Canada, Russia and China, and to compare the air carrier's liability under the national legislations of above states with them under the Warsaw System relating to the international carriage by air. Also this paper reviews the text of the draft legislation relating to the carrier's liability in respect of the carriage by air in Korea.

The Warsaw Convention for the Unification of Certain Rules Relating to International Carriage was adopted in 1929. In 1999, the ICAO adopted the Montreal Convention for the Unification of Certain Rules for International Carriage by Air vastly modernizing the unification of private air law. The Montreal Convention replaced the instruments of the "Warsaw System", and came into force on 4 November 2003.

The Montreal Convention is not only an international convention. It has also exercised a considerable influence on national legislation. A

number of states have adopted into their legislation the entire text of the Convention, or certain of its principles, with the object of regulating their national air transport.

The main feature of the liability regime of the air carrier under the Montreal Convention is the two-tier liability system for death or injury of the passenger with strict liability up to 100,000 SDR and presumptive liability with a reversed burden of proof without any limit above that threshold. The principles of the liability of the air carrier under the Montreal Convention have been adopted into national legislations by the United Kingdom, Germany, France, Canada, Russia and China.

Now the Ministry of Justice of Korea is proceeding to make a new national legislation relating to the liability of the air carrier in respect of the carriage by air. The draft legislation of the Part VI the Carriage by Air of the Commercial Code of Korea has adopted the main principles of the liability of the air carrier under the Montreal Convention.

In conclusion, the national legislation relating to the liability of the air carrier in Korea will contribute to settle efficiently the dispute on the carrier's liability in respect of the carriage of passengers, baggage and cargo by air.

Key Words : Warsaw Convention, Warsaw system, Montreal Convention,
National legislation, Liability of carrier, Liability limit