
EVOLUTION FROM WARSAW TO MONTREAL: TRANSFORMATION OF AIR CARRIER LIABILITY

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ABSTRACT

The regulation of air carrier liability has undergone a far-reaching transformation over the past century, evolving from the restrictive regime of the 1929 Warsaw Convention to the progressive two-tier liability system established by the 1999 Montreal Convention. This research paper traces the historical path of international aviation law, examining the legal mechanisms, policy considerations and practical implications that shaped this evolution. By analysing the foundational principles of the Warsaw Convention, the sequence of amendments through protocols and intercarrier agreements and the transformative approach adopted in Montreal, this study demonstrates how international aviation liability law has progressively balanced the interests of passengers, air carriers, and the aviation industry. This transformation reflects broader developments in consumer protection, international commerce, and the recognition that modernised air transportation required contemporary legal frameworks. This paper argues that the Montreal Convention represents a bigger a shift in aviation liability jurisprudence, establishing a more equitable and transparent system while maintaining sufficient protections for carrier operating in a complex global market.

INTRODUCTION

The air carrier liability under the realm of international law, has gone through much change and continuous to do so till date. The Wright Brothers flight at Kitty Hawk in 1903, the aviation industry has evolved and within sixteen years of the first powered flight, international scheduled passenger air service commenced in 1919. Dating back to the inception of air travel technology, the course of air carrier liability was dictated by international conventions. The primary regimes which has made great impacts in these businesses are The Warsaw System and The Montreal Agreement.

The Warsaw Convention signed in 1929 and effective 1933, was born from insurers fears of unlimited exposure which ultimately unified rules for international carriage of passengers, baggage and cargo presuming carrier liability but capping it severely. For example, about \$9.75 per kg for cargo to shield airlines from exposure.¹ This Convention was acted as the architecture for international aviation liability law. As the aviation technology evolved, international commerce expanded and consumer expectations rocketed. The limitations of Warsaw regime became increased. The Hague Protocol of 1955, the Guadalajara Convention of 1961, the Montreal agreement of 1955 and multiple other protocols came into existence to attempt the deficiencies in the original framework.

The limitation in Warsaw Convention led to the formulation of the Montreal Agreement in 1999. The Montreal Convention of 1999 marked a decisive departure from the Warsaw paradigm. The agreement tried to encapsulate the essence of prior regimen while adequately dealing with the modern air travel complications. Addressing the issues such as liability limits, the agreement gave a dynamic into the international air carrier liability sphere. It introduced a fundamentally reconceptualized liability system that shifted the burden of proof, expanded the scope of recoverable damages, and established clearer jurisdictional rules. This major transformation, ratified in almost and over 130 countries and effective in US from 2003, represents the significant development in aviation law since Warsaw's adoption.

Statement of the Problem

International air carriage demands predictable liability rules, yet the 1929 Warsaw Convention

¹ Comparing Air Carrier Liability: The Evolution from Warsaw System to Montreal Agreement – Legal News Feed

designed for an emerging industry imposed arbitrary limits which was undermined by inflation and fragmented by protocols. This patchwork enabled carriers to evade responsibility via broad defences, yielding inequitable recoveries and forum shopping disputes. Montreal sought reform via strict liability tiers and simplified claims, but gaps persist in non-ratifying states, multimodal ambiguities and rising cargo disputes in trade heavy regions like India.

Scope of the Problem

The scope of this study on the evolution from Warsaw to Montreal Conventions is confined to the doctrinal transformation of air carrier liability for international carriage spanning 1929 Warsaw through 1999 Montreal, focusing on passenger death, injury, baggage, cargo damage, loss, delay, defences, jurisdiction and uniformity gaps.

Research objectives

The study pursues three primary objectives:

- Trace the historical development from Warsaw Convention limitations to Montreal Convention
- Analyse structural changes from strict liability caps to two-tier system
- Evaluate impacts on uniformity, passenger compensation and carrier predictability across jurisdictions.

Research questions

There are four targeted questions that would guide the inquiry into regime transformation

- How did economic pressures post Warsaw led to amendments, culminating in Montreal's overhaul?
- How have judicial interpretations influenced practical application of both regimes?
- To what extent has Montreal restored uniformity eroded by Warsaw's multi-protocol fragmentation?

- What challenges persist for harmonization in non ratified states or domestic overrides?

Hypothesis of the study

The Montreal Convention's two-tier liability system (strict liability upto 100,00 SDRs, presumptive fault beyond) achieve greater uniformity and compensation equity compared to Warsaw's arbitrary gold franc limits and protocol fragmentation?

Significance of study

This research holds academic, practical, and policy value for international aviation law. The study fills the gaps in comparative analyses tailored to trade and air law. It aids litigators, insurers and carriers navigating residual Warsaw pockets in non-ratified jurisdictions. The evolution highlights how Montreal unified a patchwork Warsaw System into a cohesive framework ratified by over 130 countries, strengthening predictability for carriers while prioritising passenger or cargo claimant recovery. Academically, it underscores lessons in recent modernisation, influencing dispute resolution in international air carriage.

Research Methodology

This study employs a doctrinal legal research methodology with comparative analysis. Doctrinal method focuses on systematic exposition, analysis, and interpretation of primary legal rules like Warsaw Convention, Montreal Convention and Hague protocols without empirical surveys, aligning with normative inquiries into liability transformation. Comparative lens on pre and post Montreal frameworks, with jurisdictional variances revealing harmonization impacts.

Chapter I – WARSAW CONVENTION: FOUNDATION AND STRUCTURE (1929 - 1955)

1.1 The Historical Context and Genesis

The Warsaw Convention emerged when the aviation industry was confronted with a challenge of speed international expansion without any uniformed legal frameworks. Before 1929, air transportation was in a vacuum, with liability disputes subject to conflicting national laws, which in turn created uncertainty for both carriers and passengers. When it was formed, there

were two primary goals the convention aimed to achieve, which were to establish uniformity in the aviation industry with regard to the procedures dealing with claims, the laws applicable to such claims and with regard to the documentation, such as tickets and waybills. The secondary goal was to limit the air carrier's potential liability in the event of accidents.

The conventions architects realized that unlimited liability could render the aviation industry economically unviable. Early aircrafts were fragile, accident rates were high and public were very sceptical about the air travel. In this context, liability exposure could have effectively suppressed aviation's development. The Warsaw Convention balanced these competing interests by establishing clear liability limitations while simultaneously creating a presumption of carrier liability.

1.2 Core Principles and Liability Framework

The Warsaw Convention established several fundamental principles that would persist through out the subsequent aviation liability regimes. Primarily, the convention created an exclusive liability system, establishing that air carrier liability would be governed exclusively by the conventions provisions, pre-empting national legal claims. This principle of exclusivity provided certainty and prevented forum shopping, as parties could not depend the convention by invoking alternate legal bases.

Secondly, the convention imposed a presumption of carrier liability. Article 17 established that “the carrier shall be 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 disembarking”.

Third, the convention established monetary liability limitations and fourth, it established specific defences available to carriers under Art 20 and 21.

CHAPTER II – EVOLUTIONARY AMENDMENTS AND INTERIM PROTOCOLS

2.1 The Hague Protocol of 1955

The Hague Protocol, signed on September 28, 1955, amends the Warsaw Convention to modernize rules governing international air carriage and limit liability for air carriers. The fundamental purpose of the protocol was, as the original convention was written in 1929 and

with the advance of technology and law the original treaty had to be updated. Secondly, and perhaps more importantly, the Hague protocol limited the liability that commercial airliners would have to take on in the event of an accident.

The Hague Protocol introduced one substantive innovation which was, it eliminated carriers 'act of God defence' establishing that carriers could not escape liability by attributing accidents to force majeure or inevitable accident. This provision strengthened passenger protections by preventing carriers from absolving themselves through claims of unforeseeable circumstances.

2.2 The Montreal Protocols and IATA Intercarrier Agreements

Many additional protocols attempted to modernize Warsaw's liability Framework during the years between 1975 and 1955. The Montreal protocols adjusted liability limits from 8300 SDRs to 16,600 SD Rs. This increase reflected the inflation and the growing scale of aviation operations, yet they failed to address the fundamental tension between the convention's protective purposes and inadequate monetary thresholds.

Significantly, the international aviation industry itself recognized Warsaw's limitations. In 1995, major international airlines agreed to the IATA Intercarrier agreement, voluntarily waiving Warsaw's liability ceiling for passenger claims up to 100,000 SD Rs. The IATA agreement effectively signalled that Warsaw's original justifications for limited liability no longer reflected either industry capabilities or passenger expectations.

CHAPTER III- THE MONTREAL CONVENTION: TRANSFORMATIONS AND BEGINNINGS

3.1 Genesis and Motivations

The Montreal Convention formally known as the Convention for the Unification of Certain Rules for International Carriage by Air, is a multilateral treaty which was adopted on 28 May 1999 by member states of the International Civil Aviation Organization (ICAO) and it entered into force in 2003. The convention updated and replaced the earlier Warsaw Convention and Hague Protocol, which had governed international air travel since the 20th century. The primary focus of the convention is to create clearer and more consistent rules for the international transport of passengers, baggage and cargo, especially regarding airline liability in the event of injury or death.

The Montreal Convention reflected changed circumstances in multiple domains. First, aviation had matured into a major global transportation system, with billions of passengers flying annually.

Secondly, consumer protection expectations had fundamentally evolved. The passengers rights movement, consumer advocacy growth, and international human rights expansion created political pressure for enhanced protections against corporate harm.

Third, the technological advancement had dramatically improved aviation safety. Modern aircraft, navigation systems, and operational protocols had rendered aviation substantially safer than its early decades. If aviation had become substantially safer, the justification for extreme liability caps weakened considerably.

Fourth, comparative analysis revealed that other transportation industries and international commercial regimes had adopted more expansive liability frameworks.

3.2 The Two-Tier Liability System

The Montreal Conventions revolutionary feature was its adoption of a two-tier liability framework, fundamentally reconceptualizing the relationship between carrier liability and carrier fault. A key feature of the Montreal convention is a two-tier system for passenger compensation. Airlines are automatically responsible for proven damages up to 128,821 special drawing rights which is also known as SDR, equivalent to approximately US\$ 175,000, without the need for passengers or their families to prove fault. And for any claims above this amount, the airlines is only exempt from further liability if it can show that the incident was not caused by its own negligence. This system replaced the older, more limited compensation rules and was designed to simplify legal proceedings for victims and their families. Rather than going on maintaining Warsaw's modest limitations across all accident scenarios, Montreal introduced a bifurcated system:

First Tier: The strict liability up to 100,000 SD Rs for passenger death or injury, regardless of carrier fault or the exercise of reasonable care. This provision eliminated the burden on passengers to prove negligence for claims within the lower threshold. Airlines became strictly liable for damage up to this amount, like workers compensation schemes or no-fault insurance systems.

Second Tier: Presumptive Liability for damages exceeding 100,000 SD Rs with carriers bearing the burden of proving they were not at fault for the accident-causing injury. This system inverts the traditional burden of proof where passengers need not establish negligence; carriers must affirmatively establish absence of fault. Significantly, carriers cannot escape second tier liability by demonstrating mere compliance with regulations or industry standards; they must prove absence of fault in the broader sense.

3.3 Judicial Framework and Expanded Scope

Beyond the evolutionary liability structure, the Montreal substantially expanded the scope and jurisdictional provisions of the convention. In Art 17, the concept of compensable accidents to encompass “any occurrence that takes place while the passenger is on board the aircraft or in the process of embarking or disembarking”. This wide formulation addresses jurisdictional ambiguities that had troubled Warsaw interpretation.

Montreal also expressly extends the liability provisions to cover not only the contracting carrier but also “servants, agents, and any other persons”, whose commissions or omissions of act occur within their capacity, including other carriers involved in code-sharing arrangements.

Critically, the convention establishes five permissible jurisdictions for pursuing claims:

1. The carrier’s principal place of business
2. The place of business where the carriage contract was concluded
3. The domicile of the air carrier
4. The place of destination
5. The passengers principal and permanent residence (in case the carrier operates services there)

This multi-jurisdictional framework provides passengers greater flexibility in forum selection compared to Warsaw’s more restrictive approach, augmenting access to justice.

CHAPTER IV – COMPARATIVE ANALYSIS: WARSAW V. MONTREAL

4.1 Liability Framework Transformation

The evolution from Warsaw to Montreal reflects a fundamental philosophical shift regarding the relationship between carriers and passengers. Warsaw presumed that the carriers required protection from potentially damages liability to remain economically viable.

Montreal, by contrast, presumed that modern air carriers operating sophisticated aircraft could and should bear substantially greater liability exposure. The two-tier system encodes a judgement that aviation had matured sufficiently to justify the heightened passenger protections. Rather than viewing liability limitations as necessary for industry viability, Montreal conceptualizes them as reasonable compromises balancing passenger protection against carrier concerns about the unpredictable and unlimited exposure.

The shift from Warsaw's negligence requirement to Montreal's strict liability for first tier claims represents a fundamental reconceptualization. Strict liability schemes typically apply when activities are extraordinarily dangerous, when few potential injurers exist, or when risk spreading benefits justify shifting loss bearing responsibility to enterprises profiting from those activities. Montreal's adoption of strict liability implicitly accepts these justifications for aviation. These activities are dangerous with limited injurers (air carriers), and risk spreading through insurance and pricing benefits society more than individual liability shifting to passengers.

4.2 Monetary Thresholds and Adequacy

Warsaw's original 125,000 gold francs limit, while representing a substantial sum in 1929, became very inadequate as aviation expanded and accident severity increased. By the 1990's, a typical aviation accident involving a moderate sized aircraft could generate damages widely exceeding the Warsaw's limits.

Montreal's 100,000 SDR threshold appears modest by absolute standards, yet represents substantially more protection than Warsaw's nominal limits and is paired with unlimited second-tier liability for negligence. A modern aviation accident generating passenger injuries will likely trigger second-tier liability, providing comprehensive compensation regardless of damage extent.

Empirically, this framework proves very adequate because Montreal's implementation on claims resolves within the first-tier limits through settlement mechanisms while big accidents generate substantially higher recovery through second tier provision. This dual threshold structure accommodates both the routine claims and extraordinary losses within the framework.

4.3 Access to Justice and Procedural Provisions

Warsaw's restrictive jurisdictional provisions limited passenger's forum choices often forcing disputes into carriers' domiciliary jurisdictions with potentially unfavourable legal systems or evidentiary standards. Montreal's expansion to five permissible forums substantially improves passenger access to justice, permitting claims in passengers home jurisdictions where evidence and witness may concentrate.

Additionally, Montreal's elimination of contractual liability waivers ensures that passengers cannot be bound by unfavourable terms buried in complex booking confirmation documents. This consumer protection reflects modern expectations that essential service providers cannot unilaterally impose disadvantageous legal conditions.

CHAPTER V - PRACTICAL IMPLICATIONS AND IMPLEMENTATION CHALLENGES

5.1 Insurance and Risk Management Evolution

The shift from Warsaw to Montreal fundamentally altered aviation insurance structures and risk management practices. Under Warsaw, insurance pools could rely on predictable maximum exposure based on the convention's liability caps. Montreal's two-tier system and particularly the unlimited second-tier liability created greater uncertainty.

Airlines responded by developing risk management protocols, including better safety procedures, crew training and advanced aircraft maintenance programs designed to minimize fault exposure. Insurance premiums increased to reflect the expanded liability landscape, with carriers typically carrying coverage exceeding Montreal's first-tier thresholds to address potential second-tier exposure.

5.2 Settlement and Litigation Patterns

Montreal's provisions dramatically accelerated claim resolution and increased settlement rates. The strict liability first-tier threshold removed factual disputes about negligence for the vast majority of routine injury cases, converting accidents into essentially no fault scenarios.

Montreal's second-tier provisions generated more substantial damage awards for bad injuries, with carriers unable to escape liability through technical defences or regulatory compliance arguments. This framework incentivizes the settlement for serious injury claims at substantially higher levels than Warsaw would have permitted.

5.3 Ratification Challenges and Interim Coexistence

The Montreal's implementation faced substantial logical challenges. While adopted in 1999, it took several years for sufficient ratifications to achieve force; the US didn't ratify until 2003. During the interim period, aviation liability disputes remained governed by Warsaw and its protocols, creating jurisdictional complexity when fights involved countries that had ratified Montreal and those that didn't.

The contemporary aviation presents continued jurisdictional complexity. While Montreal has achieved ratification in over 130 countries, some important aviation markets remain outside the convention. Disputes involving flights to and from non-ratifying states may implicate Warsaw, creating a bifurcated liability landscape that persists into the contemporary era.

6. CONCLUSION

The evolution from the 1929 Warsaw Convention to the 1999 Montreal Convention represents one of the international laws' most significant transformations in one legal domain. Over the last seven decades, the international aviation liability law shifted from a protective regime limiting carrier exposure to a defined framework balancing passenger protection with carrier predictability. This transformation reflects broader developments in consumer protection expectations, international commerce sophistication and technological advancement.

The Warsaw Convention's founders necessarily prioritized aviation industry viability, establishing protective liability limitations that permitted the emerging aviation industry to develop without catastrophic insurance exposure. However, as aviation matured the Warsaw's

protective posture increasingly conflicted with passengers' legitimate expectations and contemporary legal standards applicable to other industries.

The Montreal Convention transcended this protective approach through revolutionary reconceptualization of carrier liability. The double tier system addresses competing policy objectives providing fast and predictable first tier compensation at the same time ensuring that bad injuries generate liability proportionate to actual damages through unlimited second tier provisions. This framework represents matured international law making, reflecting both legal sophistication and balanced policies.

Contemporary aviation liability law under Montreal demonstrates that even mature sound international regimes require periodic comprehensive reconsideration. The convention stands as a model for international legal regime renovation. It addresses areas of contention, comprehensive in nature and fundamentally reconceptualize underlying principles when circumstances warrant transformation.

The journey from Warsaw to Montreal demonstrates international laws capacity to evolve institutions to match technological advancement and social change while maintaining the underlying commitment to dispute resolution frameworks essential for global commerce.

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