

***I-CARe Program***  
*International Civil Aviation Relief Program*

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September 2024

A thesis submitted to McGill University in partial fulfillment of the requirements  
of the degree of Master of Laws (LL.M) in Air and Space Law – Thesis

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## **ABSTRACT IN ENGLISH**

Focusing on mental health and emotional suffering, this project aims to create essential enhancements and synergies within the international legal framework of private international air law. Specifically, the *I-CARe* Program is designed to complement the system of advance payments established under Article 28 of the Montreal Convention, which provides financial support to the families of air crash victims. The *I-CARe* Program will be offered on a voluntary basis, addressing the unique challenges of pain and suffering while also promoting financial independence for the affected families, simultaneously preserving the longevity and economic viability of the airline industry.

## **ABSTRACT IN FRENCH**

Axé sur la santé mentale et la souffrance émotionnelle, ce projet vise à créer des améliorations et des synergies essentielles au sein du cadre juridique international du droit aérien international privé. Plus précisément, le programme *I-CARe* est conçu pour compléter le système de paiements anticipés établi en vertu de l'article 28 de la Convention de Montréal, qui fournit un soutien financier aux familles des victimes d'accidents aériens. Le programme *I-CARe* sera proposé sur une base volontaire, abordant les défis uniques de la douleur et de la souffrance tout en favorisant l'indépendance financière des familles concernées, tout en préservant la longévité et la viabilité économique de l'industrie aérienne.

## ACKNOWLEDGEMENTS

Immense gratitude goes to my family, the very essence of my being. Their unwavering support and belief in me have been the greatest source of strength. I am deeply grateful to the Institute of Air and Space Law at McGill University for this amazing adventure. Every experience has forced me to grow and challenge my every belief.

This year could not have been successful without my friends, old and new. Your presence in my life has been so meaningful that a brief acknowledgment would not do it justice. Everything you need to know my eyes will tell you. You have been family, a lifeline. For that, I am forever grateful. My angels, you know who you are, you have blessed my life beyond words could describe. Thank you.

This thesis is dedicated to all who have the courage to ‘fly solo’.

## LIST OF ABBREVIATIONS

ACVFFI	Air Crash Victims' Families Federation International
CAB	Civil Aeronautics Board
CITEJA	Comité International Technique d'Experts Juridiques Aériens
CJEU	Court of Justice of the European Union
ECAC	European Civil Aviation Conference
EURPOL	ECAC Working Group on Intra-European Air Transport Policy
FNC	Forum Non Conveniens
GDPR	General Data Protection Regulation
GP	Guadalajara Protocol
HIPPA	Health Insurance Portability and Accountability Act
HP	Hague Protocol
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
IFALPA	International Federation of Air Line Pilots' Associations
IMF	International Monetary Fund
MC	Montreal Convention 1999
MHPAEA	Mental Health Parity and Addiction Equity Act 2008
SDR	Special Drawing Rights
TAPS	Tragedy Assistance Program for Survivors
WC	Warsaw Convention 1929

## Introduction

Air law is ‘a body of rules governing the use of airspace and its benefits for aviation, the general public, and the nations of the world,’<sup>1</sup> and is, as such, traditionally ‘confined only to the legal regulation of social relations generated by the aeronautical uses of the air space.’<sup>2</sup> While air law may seem a very highly specialized area of law, it is nonetheless a very broad subject of study. Air law presents two essential characters, its internationality and, at the same time, its strong principle of sovereignty.<sup>3</sup> These two layers of air law, cover very broad legal issues from air transport to aeronautical activities. While ‘public international air law’ governs the interaction among subjects of international law concerning air navigation, transport and airspace, ‘private international air law’ covers private relationships and transactions in the context of air travel and aviation. The latter will be the focus of this work. In essence, international air law, whether public or private, is the result of international cooperation.

The necessity to establish a body of rules and develop common principle governing air travel emerged quickly in the 20<sup>th</sup> century. C. BEREZOWSKI noted in this regard that the development of international aviation law preceded the development of national aviation law, as the solutions adopted internationally were often incorporated into nascent national legislations.<sup>4</sup> In Chapter 1, this work will analyze two main topics: the interpretation of the term ‘accident’ and the evolution of liability according to the 1929 Warsaw Convention<sup>5</sup> and the 1999 Montreal Convention<sup>6</sup>. For the first, this will be done introducing both historical evolutions for the interpretation and major case

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<sup>1</sup> Isabella Diederiks-Verschoor & Pablo Mendes de Leon, *An Introduction to Air Law*, 9<sup>th</sup> ed. (Alphen aan den Rijn: Kluwer Law, 2012) at 1.

<sup>2</sup> Michael Milde, *International Air Law and ICAO*, 3<sup>rd</sup> ed. (The Hague: Eleven Pub., 2016) at 2; Paul Fauchille, “Le domaine aérien et le régime juridique des aérostats” (1901) 8 :4 *Revue générale de droit international public* 414.

<sup>3</sup> The principle of air sovereignty was firstly embedded in the 1919 Paris Convention. This core principle of aviation law was later confirmed in the Chicago Convention and given the status of customary international law, by establishing that ‘the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.’ 1944 Chicago Convention, *Convention on International Civil Aviation*, Chicago, December 7, 1944 (15 U.N.T.S. 295) (entered into force on April 4, 1947) [hereinafter: 1944 Chicago Convention], Article 1.

<sup>4</sup> Cezary Berezowski, “Le développement progressif du droit aérien” (1969) 128 *Recueil des Cours de l’Académie de Droit International* 1 at 14.

<sup>5</sup> *Convention for the Unification of certain Rules relating to International Carriage by Air*, Warsaw, October 12, 1929, 137 LNTS 11 (entered into force on February 13, 1933) [hereinafter: 1929 Warsaw Convention or Warsaw Convention of 1929].

<sup>6</sup> *Convention for the Unification of certain Rules for International Carriage by Air*, Montreal, May 28, 1999, 2242 UNTS 309 (entered into force on November 4, 2003) [hereinafter: 1999 Montreal Convention or Montreal Convention of 1999].

law. Specific references to the law will be provided to the reader, so to find the pivotal specificities and intricacies of the topic. Then, for what concerns liability, the same principle will apply. This work will approach the evolution of liability from an historical perspective, as well as case law perspective to make the reader aware of the vastness of this topic. Further, the topic of ‘advanced payments’ will be explored and new questions and reflections introduced to the reader.

Then, Chapter 2 will center then around the role of international organizations, associations and insurance companies and their role in contributing to the development of international cooperation. Specifically, the goal of the section is to represent and highlight the detail that goes into different aspects of family assistance and insurance policies. The section will introduce the topic as completely as possible and will invite the reader to consider many elements that, ultimately, create airline insurance policies and their complex system of liability.

Finally, Chapter 3 will truly develop the idea of the I-CARe Program. After the reader has been presented with the basic thoughts, topics and reflections of the case, exclusive focus will be given to introducing a new way of thinking, possibly a new system. This is a project that would naturally complement the already existing system of family assistance of ‘advanced payments’ in the 1999 Montreal Convention. However, it would focus specifically on psychological support for the families of air crash victims. I-CARe tries to reimagine the different resources already available - with a focus on international organizations, associations, airline insurers and victims - to ensure passengers’ rights protection and promote the social responsibility of the airline industry. This will be done in the spirit of cooperation and trying to strike a balance between passengers’ needs and airlines business. To conclude, it is essential to specify that, at this stage, no solution can be offered, as it is clearly beyond the scope and purpose of this work. Nevertheless, this is a project the author believes in and focus and drive to shift the present reality will be pursued in the proper forums.



# Chapter 1

## the evolution of the term ‘accident’ and of ‘liability’ in International Private Air Law

### 1. The Warsaw Convention 1929

The Warsaw Convention of 1929 first emerged from two main international conferences held in Paris and Warsaw, respectively in 1925 and 1929. At that time, international transport by air was booming and a cohesive legal regulation was required. Therefore, both conferences set the goal of instituting at international level, a custom regime and standardization in the rules governing air transport. Moreover, there was the fear that unless airlines were protected by liability thresholds, the industry would have been the target of ruinous compensation claims and massive insurance premiums.<sup>7</sup> So, the Warsaw Convention of 1929 became a fundamental international treaty, regulating liability in international air travel and focusing on the liability of airlines in cases of accidents, damage, loss, or delay. The Warsaw Convention of 1929 applies to all international flights where the departure and destination points are either within member countries or within one member country with an agreed stopover in another country.<sup>8</sup>

The first international air law conference was held in Paris from October 27<sup>th</sup> to November 6<sup>th</sup>, 1925, where a draft convention was then submitted for the regulation of international carriage by

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<sup>7</sup> *Reed v. Wiser*, 555 F. 2d 1079, 1090 (2d Cir. 1977).

<sup>8</sup> Arthur K. Kuhn, “The Warsaw Convention on International Transportation by Air” (1930) 24:4 Am J Intl L 746 at 746.

air. In that setting and upon recommendation, the *Comité International Technique d'Experts Juridiques Aériens* (CITEJA)<sup>9</sup>, was set up to work on the draft treaty. The CITEJA submitted the preliminary draft “concerning carriage documents and transporter’s liability in respect of international air carriage” during the Second International Aviation Law Conference, held in Warsaw in 1929 from October 4<sup>th</sup> to 12<sup>th</sup>. At the conference were invited forty-four nations, but only thirty-two were represented – e.g. the United States of America sent an observer.<sup>10</sup> At the end of the conference, twenty-three nations signed the treaty. The Convention entered into force on 13 February 1933, after it had been deposited by five states, in accordance with Article 37, paragraph 2. As previously mentioned, the Convention addressed liability concerns by setting specific liability rules that establish that airlines are liable for damages sustained in the event of death or injury to passengers, provided the accident took place on board the aircraft or during embarking or disembarking (Article 17). Further, the Convention also covers damage to checked baggage and goods as well as losses caused by delay (Article 19 and 20). Finally, liability limits were initially set to a maximum amount of 125,000 Poincaré francs (a currency measure defined by the convention) for passenger injury or death, loss or damage of luggage (Article 22).

Nevertheless, shortly after the Convention came into force, it came under attack for the first time. Airlines were stressing that the air waybill requirements were too strict and, shortly after the second World War, the attention shifted, emphasizing and complaining that the liability thresholds of Poincaré francs 125,000 were too low, especially in the event of personal injury claims. In the words of RAGE, STIFF and SPEISER: ‘probably the principal problem facing the budding international airlines was the securing of capital, in the face of what appeared to be enormous hazards. In the absence of a limitation of liability, one disaster might sweep away a large capital investment.’<sup>11</sup>

## 1.1 The Hague Protocol.

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<sup>9</sup> See Linus R. Fike, “The Citeja” (1939) 10:2 Air L Rev 169; Stephen Latchford, “The Warsaw Convention and the C.I.T.E.J.A.” (1935) 6:1 J Air L 79; John Jay Ide, “The History and Accomplishments of the International Technical Committee of Aerial Legal Experts (C.I.T.E.J.A.)” (1932) 3:1 J Air L 27.

<sup>10</sup> Arthur K. Kuhn, *supra* note 8.

<sup>11</sup> Maurice Ravage, Benjamin H. Siff & Stuart M. Speiser, “Report on the Warsaw Convention as Amended by the Hague Protocol” (1959) 26:3 J Air L & Com 255 at 256.

Hence, a diplomatic conference was held at The Hague from September 6<sup>th</sup> to 28<sup>th</sup>, 1955.<sup>12</sup> The result was the signing of an additional protocol by 25 of the 44 nations represented. Therefore, the Warsaw Convention in its original set up was not replaced but was modified by the Hague Protocol for those states who agreed to sign and ratify the instrument. Therefore, those state parties consider the Warsaw Convention and the Hague Protocol as one body of work, a signed and consolidated version of the treaty.<sup>13</sup> The Hague Protocol entered into force on August 1<sup>st</sup>, 1963, ninety days after it was deposited.<sup>14</sup>

The Protocol introduced two significant reforms, besides the simplification of rules regarding documents of carriage<sup>15</sup> and the disuse of exculpatory evidence in cases of ‘nautical fault’.<sup>16</sup>

Firstly, Article 25 of the 1929 Warsaw Convention, imposing unlimited liability upon the carrier without distinction in cases of intentional or negligent misconduct, was amended. The shift imposed by the Protocol was to focus on the harmful consequence, instead of the harmful action. Hence, the Hague Protocol imposes unlimited liability only where a harmful action was committed with the intent of/or the knowledge that an action would be causing damage. Therefore, the liability rules were relaxed in favor of the carrier since unlimited liability would be imposed only for involuntary gross negligence.<sup>17</sup> Therefore, it could be said that the Hague Protocol is generally less preoccupied with the issue of fault. Secondly, another reform worth mentioning for the sake of this work, is the change in liability threshold, which industrialized nations believed to be too low. The United States of America proposed a threefold increase in the limit, which was not agreed upon by most nations, that were proposing to double the amount (from 125,000 francs to 250,000). The United States ended up not agreeing with the amount, therefore not signing the Protocol and, at the end, renouncing the Warsaw Convention effective May 15<sup>th</sup>, 1966.<sup>18</sup> After its renunciation, the USA demanded a new international treaty to fix the liability limits, proposing USD 100,000 in

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<sup>12</sup> For details, see ICAO Legal Committee, Report on the revision of the Warsaw Convention, ICAO International Conference on Private Air Law, The Hague, September 1955, Vol. 2, at 93, ICAO Doc. 7686 – LC/140 (1956), Vol. I: Minutes and Vol. II: Documents [hereinafter: The Hague Protocol].

<sup>13</sup> See Hague Protocol, Art. XIX.

<sup>14</sup> See Hague Protocol, Art. XXII.

<sup>15</sup> The Convention requires airlines to provide passengers with a ticket that includes specific information such as the places of departure and destination. For cargo, it mandates an air waybill with details about the goods, the carrier, and other relevant information.

<sup>16</sup> See 1929 Warsaw Convention, *supra* note 5, Art. 20 para 2.

<sup>17</sup> Riese, [1956] *ZLR*, 33; Dempsey, in: *Cologne Compendium*, Part 7, notes 7 *et seq.*

<sup>18</sup> The withdrawn was prior to that date, after a conference held at ICAO in February 1966. See ICAO Doc. 8584 – LC/154-1, 154-2 (1966).

case of personal injury and requiring international airlines to accept a threshold of USD 75,000 per passenger until a new treaty came into force.

## **1.2 The Montreal Agreement**

In February 1966, fifty-nine states met at ICAO, in Montréal, to negotiate new liability thresholds. Persuaded by the USA, to the meeting participated also international organizations, such as the International Air Transport Association (IATA) and the American Civil Aeronautics Board (CAB). The meeting gave way to the so-called Montreal Agreement, applicable only for flights to, from and which stop-over in the US. This agreement was different from an international treaty, as it was designed to be a bilateral agreement, primarily between airlines and the US government, aimed at addressing certain liability issues for international air travel - particularly concerning the compensation of passengers in the event of injury or death. This means that the Montreal Agreement was essentially a ‘domestic law’ solution that, in the end, contributed to creating even more fragmentation in a system of liability that was already under pressure.

The Montreal Agreement persuaded the USA to withdraw its initial renunciation and effectively increased the threshold to USD 75,000 per passenger (inclusive of legal fees and costs). Additional claims for damages by a surviving spouse for loss of companionship are included within the total.<sup>19</sup> Airlines also agreed that they would no longer submit any exculpatory evidence, effectively introducing a regime of ‘absolute liability’, avoiding the need to prove fault. The term ‘absolute liability’ was suggested by ICAO and was thereafter established by the Montreal Protocol. Nevertheless, the fact that the Montreal Agreement was limited to the carriage of passengers to and from the United States and to stopovers in US territory led to a fractured system of international liability. It would have been expected that IATA would work to reestablish some harmony through corresponding provisions, but any such effort was left undone with the formulation of the general conditions of carriage for passengers and baggage in Honolulu, 1970.

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<sup>19</sup> *Hinds v. Philippine Airlines* – 15 Avi 17, 701, US District Court (SDNY), 1979; *Gottlieb v. Yugoslav Airlines* – 22 Civ. 4285, Mem., US District Court (SDNY), 1973; *Kwasi v. KLM* – 24 Avi 17, 451, US District Court (DC), 1993.

The IATA general conditions did not alter the rule that the injured party must prove fault on the part of the airline if the Warsaw Convention does not apply.<sup>20</sup>

International efforts to re-establish a uniform system of liability did not stop and ICAO set up a committee of experts to consider a revision of the Warsaw Convention. In 1971, fifty-five states met in Guatemala to renegotiate the Warsaw Convention and the whole liability system.

### **1.3 The Guatemala Protocol**

On March 8<sup>th</sup>, 1971, the Guatemala Protocol was signed by 21 states and the liability threshold increased to Poincaré francs 1.5 million, accommodating the US' requests.

However, a new proposal by New Zealand was accepted, affirming that the new threshold should now be absolutely binding. The New Zealand delegation carried a motion that liability thresholds should be increased by USD 2,500 year on year for the following 12 years in the absence of any objection to the validity of the Protocol by a two-thirds majority at diplomatic conferences to be held in the fifth and tenth years.<sup>21</sup>

To date, the Guatemala Protocol has only been ratified by 7 states (Columbia, Costa Rica, Cyprus, Greece, Italy, the Netherlands and Togo). The USA never ratified the Protocol, remaining dissatisfied with its contents. For these reasons, it never came into force. However, the problem has since been resolved, by the entry into force of the Montreal Convention 1999.

### **1.4 The Montreal Protocols 1975**

The first Montreal Protocol emerged in 1975, after a conference held in Montreal between September 3<sup>rd</sup> to 25<sup>th</sup>. Although it dealt with the issue of liability indirectly, it prescribed the unit of currency to be used in its calculation. As per its background:

When the Warsaw Convention was negotiated, the participating states needed to define liability by a currency unit which would not be affected by economic changes. This was

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<sup>20</sup> See Art. XVII, para. 2a IATA 'General conditions of carriage'.

<sup>21</sup> See the original text ICAO-Legal-Committee, 17th Sess., Montreal, ICAO Doc. 8878 – LC/162, at 364 (0701).



hire, charter and exchange of airplanes. The liability provisions of the Warsaw Convention are extended from the ‘contracting’ carriers to the so-called ‘actual’ carriers.

In synthesis, following the Warsaw Convention 1929, several Protocols have been drafted. It should be clear that some have not entered into force and may have partially been pre-empted by the Montreal Agreement.<sup>26</sup>

1. The Warsaw Convention of 1929 (WC).
2. The WC of 1929 as amended by Montreal Protocol No. 1 of 1975.
3. The WC of 1929 as amended by the Hague Protocol of 1955.
4. The WC/HP as amended by Montreal Protocol No. 2 of 1975.
5. The WC/HP as amended by the Guatemala Convention of 1971(not in force).
6. The WC/HP/GP as amended by Montreal Protocol No. 3 of 1975 (not in force).
7. The WC/HP as amended by Montreal Protocol No. 4 of 1975.

The Guadalajara Protocol of 1961 applies to all these combinations.

It must be noted that the Warsaw Convention and its Protocols remain legally binding even after the entry into force of the Montreal Convention of 1999. The WC still applies to the so-called ‘round trips’ starting from a signatory state of the WC, but not the MC, as well as the ‘one-way’ trips between two WC where Montreal has not been ratified.

## **2. The Montreal Convention of 1999**

Starting from the 1980s there have been countless efforts to try and amend the Warsaw Convention - e.g. the 60th Conference of the International Law Association which was held in Montreal in 1982 or the Lloyds of London Press Aviation Conference which took place in Alvor in 1987). On top of that, numerous airlines developed proposals to that end (BOAC, BEA, BA, Japan Airlines,

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<sup>26</sup> *Idem.*

and other Airbus Industries).<sup>27</sup> Several international organizations have also made efforts to increase liability thresholds or modify the structure of the Warsaw Convention.

While the initiatives that prompted the adoption of the Montreal Convention were multiples, for the purposes of this work, attention should be paid to the initiative of the European Civil Aviation Conference (ECAC) commenced in June 1993 with a meeting of the ECAC Working Group on Intra-European Air Transport Policy (EURPOL). During its work, the liability threshold was proposed to be raised to SDR 250,000 and regularly reviewed. Most notably, ICAO was also to be responsible of three agreed points of order:

- immediate payment of a non-refundable lump sum to victims or their dependents in the event of death or personal injury;
- faster payment of the balance of the uncontested portion of compensation;
- payment of the final balance within a reasonable period.

In May 1997, the legal committee of ICAO approved the text of a draft convention for the modernization of the Warsaw Convention.<sup>28</sup> One of its most significant features was the removal of the liability threshold in case of death and personal injury of passengers. It further provided that a regime of strict liability should apply to compensation claims under SDR 100,000. This means that passengers would not have to prove fault, and the carrier may not submit any exculpatory evidence. Nevertheless, carriers could still submit defense of contributory negligence. This means that, generally, only proof of damage is required for claims below the SDR 100,000 thresholds. The draft also introduced the so-called ‘fifth jurisdiction’, extending those grounds recognized by the Warsaw Convention - adding it to the four *fora* previously available under article 28 of the Warsaw Convention.<sup>29</sup> Specifically: (i) the domicile of the carrier, (ii) the principal place of business, (iii) the place where the contract was made, (iv) and the destination<sup>30</sup>.

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<sup>27</sup> Bin Cheng, *The 1999 Montreal Convention on International Carriage by Air concluded on the Seventieth Anniversary of the 1929 Warsaw Convention*, Part I: [2000] *ZLW*, 287; Part II: [2000] *ZLW*, 484.

<sup>28</sup> Document C-WP/10613 of 2 Jun. 1997; See Bin Cheng, “The 1999 Montreal Convention on International Carriage by Air Concluded on

<sup>29</sup> Namely, the country in which the carrier is established, or where it has its principal place of business, or where it has an establishment by which the contract has been concluded or the Court of the place of destination.

<sup>30</sup> The Warsaw Convention further established rules for making claims and filing lawsuits, including a two-year limit from the date of arrival or the expected date of arrival.



The 1999 Montreal Convention establishing the so-called ‘fifth jurisdiction,’ at the option of the plaintiff, as the domicile or permanent place of residence of the passenger and acceding to a long-time US request. As per Article 33(2) of the Montreal Convention it is established that:

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 or her 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.<sup>31</sup>

Finally, the trouble of obtaining compensation which is faced by victims of air disasters, or their dependents needed be significantly reduced. However, critics to this ICAO draft have been pushed forward and will be further considered throughout this work.<sup>32</sup> On May 28<sup>th</sup>, 1999, the new Convention was signed by 52 out of a total of 122 states, 33 of which had attended the conference. Among the signatories were 18 European states (including Germany), 18 African states and the USA. The Convention required ratification by 30 states before it could enter into force, which it did on November 4<sup>th</sup>, 2003.

The application of the Warsaw and Montreal Conventions depends upon the fulfilment of the criteria stipulated by the texts and the scope of their application and whether the states or other legal entities concerned have acceded to the relevant treaties (i.e. geographical jurisdiction). As such, the 1999 Montreal Convention has been considered ‘a successful attempt to unify certain rules pertaining to the contractual relationship between air carriers on the one hand and passenger and consignors or shippers on the other,’<sup>33</sup> although there are still many factors that are currently affecting the fragmentation of the ‘Warsaw-Montreal system.’<sup>34</sup>

### **3. The coexisting realities of the Warsaw Convention and Montreal Convention.**

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<sup>31</sup> 1999 Montreal Convention, *supra* note 6, article 33(2).

<sup>32</sup> For more see Michael Milde, “ICAO Work on the Modernization of the Warsaw System” (1989) *AL* 193.

<sup>33</sup> Me Pablo Mendes de Leon, Werner Eyskens, “The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System” (2001) 66:3 *J Air L & Com* 1185.

<sup>34</sup> For more see Pablo Mendes de Leon, Werner Eyskens, “The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System” (2001) 66:3 *J Air L & Com* 1155.

The relationship between the Warsaw Convention of 1929 and the Montreal Convention of 1999 is enshrined in Article 55 of the latter Convention, establishing that the new instrument prevails over the preexisting one only for all States parties which ratified the Montreal Convention of 1999. This means that, in the event of an accident or incident involving one party to the Montreal Convention and another State which has only ratified the Warsaw Convention, the latter will be applicable. Indeed, as long as all the countries which ratified the Warsaw Convention do not ratify the Montreal Convention, both treaties will apply at the international level. Today, the Montreal Convention of 1999 has 139 parties—including the European Union<sup>35</sup>, through amending Regulation (EC) No. 2027/97<sup>36</sup>, and the Warsaw Convention 1929 has 152 parties, of which 137 are also bound by The Hague Protocol. Therefore, the 1929 Warsaw Convention still holds a higher number of signatories, and is applicable in cases involving States such as Algeria, Belarus, Iran, and Venezuela.<sup>37</sup>

As it is, both Conventions are in force internationally. The coexistence of both raised several issues and it must be kept in mind that:

Among the many reasons which made it imperative to consolidate and modernise the several separate regimes of international carriage by air that had sprung up within the so-called Warsaw System was to end the confusion for all concerned caused by the co-existence of these separate regimes which formed a veritable legal labyrinth.<sup>38</sup>

The Warsaw Convention gave leeway to the establishment of a common system of liability at international level that still prevails today, even if it progressively created challenges for the uniformity that was initially sought after by its drafters. Even after the adoption of the Montreal Convention<sup>39</sup> in 1999, the 1929 Warsaw Convention is still relevant and served as a yardstick for the posterior evolution of the liability regimes of air carriers, both internationally and nationally.<sup>40</sup>

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<sup>35</sup> *Decision 2001/539/EC of 5 April 2001*, [2001] OJ L 194/38.

<sup>36</sup> *Regulation (EC) No 889/2002 of 13 May 2002*, [2002] OJ L 140/2.

<sup>37</sup> It should also be considered that there are also states which are still not bound by either instrument.

<sup>38</sup> Bin Cheng, “The Labyrinth of the Law of International Carriage by Air – Has the Montreal Convention 1999 Slain the Minotaur?”, (2001) 50:2 ZLW155.

<sup>39</sup> *Supra* note **Error! Bookmark not defined..**

<sup>40</sup> Mario O. Folchi, *Tratado de derecho aeronáutico y política de la aeronáutica civil*, (Buenos Aires: Astrea, 2015) at 477.

### 3.1 Passenger Death and Injury under the Warsaw Convention: Liability Limits and provisions

The Warsaw Convention set specific limits on the amount of compensation that passengers or their beneficiaries could claim for death or injury. These limits were designed to provide a form of balance between protecting passengers and ensuring the viability of the nascent airline industry. To clarify, when it comes to passengers' death and injury, it is possible to mentally categorize key elements that help in the assessment liability: (i) liability conditions, (ii) Definition of accident, (iii) types of damage covered, (iv) claims process, (v) exclusivity claims, and (vi) the burden of proof. As for the liability conditions, the airline is considered liable for damages in the event of death or bodily injury of the passenger, in the event the injury occurred onboard the aircraft or during embarking or disembarking.<sup>41</sup>

According to the international instrument, the term 'accident' is defined as an unexpected or unusual event, external to the passenger, that is part of the operation of the aircraft and not an internal reaction of the passenger.<sup>42</sup> To this end, the definition was clarified in the *Air France v. Saks* (1985)<sup>43</sup> case, where the US Supreme Court ruled that 'normal cabin pressure changes' were not to be considered an accident.<sup>44</sup> Further, damages covered can be different types: from physical injury, which are direct injuries caused by an accident – e.g. broken bones, burns, lacerations; death, which comprehends compensation towards the family or beneficiaries of the passenger who

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<sup>41</sup> 1929 Warsaw Convention, *supra* note 5, Article 17.

<sup>42</sup> See UK cases, *KLM Royal Dutch Airlines v Morris* [2001] EWCA Civ 790; *King v Bristow Helicopters Ltd. (Scotland)*, [2002] UKHL 7; *Deep Vein Thrombosis and Air Travel Group Litigation* [2005] UKHL 72.

<sup>43</sup> *Air France v Saks*, 470 US 392 (1985) at 405: "We conclude that liability under Article 17 of the Warsaw Convention arises only if a passenger's injury is caused by an unexpected or unusual event or happening that is external to the passenger."

<sup>44</sup> Per the wording in *AF v. Saks*, according to the original French text, Article 17 foresees as follows: 'Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement' To determine the meaning of the term "accident" in Article 17 we must consider its French legal meaning. See *Reed v. Wiser*, 555 F.2d 1079 (CA2), cert. denied, 434 U.S. 922, 98 S.Ct. 399, 54 L.Ed.2d 279 (1977); *Block v. Compagnie Nationale Air France*, 386 F.2d 323 (CA5 1967), cert. denied, 392 U.S. 905, 88 S.Ct. 2053, 20 L.Ed.2d 1363 (1968). As illustrated in *AF v. Saks*, "this is true not because "we are forever chained to French law" by the Convention, see *Rosman v. Trans World Airlines, Inc.*, 34 N.Y.2d 385, 394, 358 N.Y.S.2d 97, 102, 314 N.E.2d 848, 853 (1974), but because it is our responsibility to give the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties. *Reed, supra*, at 1090; *Day v. Trans World Airlines, Inc.*, 528 F.2d 31 (CA2 1975), cert. denied, 429 U.S. 890, 97 S.Ct. 246, 50 L.Ed.2d 172 (1976). We look to the French legal meaning for guidance as to these expectations because the Warsaw Convention was drafted in French by continental jurists. See Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv.L.Rev. 497, 498-500 (1967)."

died as a result of an accident; As per the case, two significant features of these provisions stand out in both the French and the English texts:

‘First, Article 17 imposes liability for injuries to passengers caused by an ‘accident,’ whereas Article 18 imposes liability for destruction or loss of baggage caused by an ‘occurrence.’ This difference in the parallel language of Articles 17 and 18 implies that the drafters of the Convention understood the word ‘accident’ to mean something different than the word ‘occurrence,’ for they otherwise logically would have used the same word in each article.<sup>45</sup> The language of the Convention accordingly renders suspect the opinion of the Court of Appeals that ‘accident’ means ‘occurrence.’”

Further,

‘Second, the text of Article 17 refers to an accident *which caused* the passenger's injury, and not to an accident which *is* the passenger's injury. In light of the many senses in which the word ‘accident’ can be used, this distinction is significant. As Lord Lindley observed in 1903: “The word ‘accident’ is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word ‘accident’ is also often used to denote both the cause and the effect, no attempt being made to discriminate between them.” *Fenton v. J. Thorley & Co.*, [1903] A.C. 443, 453. In Article 17, the drafters of the Warsaw Convention apparently did make an attempt to discriminate between “the cause and the effect”; they specified that air carriers would be liable if an accident *caused* the passenger's injury. The text of the Convention thus implies that, however we define “accident,” it is the *cause* of the injury that must satisfy the definition rather than the occurrence of the injury alone. American jurisprudence has long recognized this distinction between an accident that is the *cause* of an injury and an injury that is itself an accident.<sup>46</sup> While the text of the Convention gives these two clues to the meaning of “accident,” it does not define the term. Nor is the context in which the term is used illuminating.’

The Court concluded that ‘liability under Article 17 of the Warsaw Convention arises only if a passenger's injury is caused by an unexpected or unusual event or happening that is external to the passenger.’ Further the Court did express that: ‘this definition should be flexibly applied after assessment of all the circumstances surrounding a passenger's injuries.’ For example, ‘lower courts

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<sup>45</sup> See Goedhuis, *National Airlegislations and the Warsaw Convention* 199 (1973); M. Milde, *The Problems of Liabilities in International Carriage by Air* 62 (Caroline Univ.1963).

<sup>46</sup> See *Landress v. Phoenix Mutual Life Ins. Co.*, 291 U.S. 491, 54 S.Ct. 461, 78 L.Ed. 934 (1934).

in this country have interpreted Article 17 broadly enough to encompass torts committed by terrorists or fellow passengers.<sup>47</sup> Nevertheless, the term ‘accident’ has never broadened enough to include mental injury, at least not through interpretation. Indeed, it is a field that has historically been tossed aside by air law but that is emerging more and more is coverage for mental injuries. Historically, as ruled in *Eastern Airlines, Inc. v. Floyd* (1991)<sup>48</sup>, mental injury damages can only be compensated when accompanied by physical injury.

As per the claim process, passengers or their representatives must file a claim within two years<sup>49</sup> from the date of the incident. Airlines must provide compensation within the established liability limits, unless proven that all necessary measures were taken to avoid the accident or that the accident was caused by third parties. Strictly tied to the claim is the exclusivity provided in the 1929 Warsaw Convention. This means that passengers who seek that remedy must rely solely on the Warsaw Convention when seeking compensation for injuries or death in international air travel. The principle was upheld in the *Sidhu v. British Airways case* (1997)<sup>50</sup>, which precluded any other forms of claims not specified under the Convention. Generally on burden of proof, in case of passengers’ death or injury the burden of proof lies on the passenger or their representatives to show that an accident occurred, leading to the death or injury. Once the accident is established, the airline must prove that it took all necessary measures to avoid the damage or that the damage was caused by the sole negligence of a third party.

In summary, the liability framework under the Warsaw Convention and its amendments balances the interests of both passengers and airlines by setting clear limits and conditions for compensation in cases of death and injury. The evolution of these limits, particularly through the Montreal Convention 1999, reflects the efforts of the industry to provide fairer compensation while maintaining the sustainability of the global airline industry, a noble goal that has been recently threatened.

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<sup>47</sup> See *Evangelinos v. Trans World Airlines, Inc.*, 550 F.2d 152 (CA3 1977) (en banc) (terrorist attack); *Day v. Trans World Airlines, Inc.*, 528 F.2d 31 (CA2 1975) (en banc) (same), cert. denied, 429 U.S. 890, 97 S.Ct. 246, 50 L.Ed.2d 172 (1976); *Krystal v. British Overseas Airways Corp.*, 403 F.Supp. 1322 (CD Cal.1975) (hijacking); *Oliver v. Scandinavian Airlines System*, 17 CCH Av.Cas. 18,283 (Md.1983) (drunken passenger falls and injures fellow passenger)

<sup>48</sup> *Eastern Airlines, Inc. v. Floyd* (1991), 499 U.S. 530 (1991).

<sup>49</sup> 1929 Warsaw Convention, *supra* note 5, Article 29 and 1999 Montreal Convention, *supra* note 6, Article 35(1).

<sup>50</sup> *Sidhu v. British Airways* [1997] UKHL J1212-5.

### 3.2 Notable Case Law: U.S. Supreme Court Cases and International Cases

As mentioned above, the most famous definition of the term ‘accident’ was adopted by the US Supreme Court in the *Air France v. Saks* case.<sup>51</sup> The case is one of the most pivotal cases, addressing what constituted an ‘accident’ under the Warsaw Convention and that has been ever since become the standard definition. In detail, the case in question saw a passenger who experienced permanent hearing loss due to normal cabin pressure changes during a flight, and the court had to determine whether that situation constituted an ‘accident.’ The Supreme Court concluded that an ‘accident’ under Article 17 of the 1929 Warsaw Convention is an unexpected or unusual event or happening that is external to the passenger and that normal operations, like typical cabin pressure changes, did not qualify. Therefore, in the final ruling, the judges stated that ‘liability under Article 17 of the Warsaw Convention arises only if a passenger’s injury is caused by an unexpected or unusual event or happening that is external to the passenger.’ The decision had great impact on providing a clearer definition of accidents, influencing subsequent interpretations of airline liability.

Another interesting example is the *Eastern Airlines, Inc. v. Floyd* (1991).<sup>52</sup> Passengers on the flight sustained what they claimed to be mental anguish after the aircraft lost power in all engines but later landed safely. In this case, the US Supreme Court held that the 1929 Warsaw Convention does not allow recovery for purely mental injuries if unaccompanied by physical injury. Indeed, the case reinforced the requirement of physical injury for compensation under the Warsaw Convention, influencing future claims related to emotional distress in aviation incidents. This remains the core of the issue that will be further and more specifically addressed in this work, as the non-inclusion of this aspect has given significant leeway to national jurisdictions and the forum-non-convenience phenomenon to award damages for unsustainable sums.<sup>53</sup> The definition of ‘accident’ was later adopted also by UK judges<sup>54</sup> and French Courts, defining the air accident

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<sup>51</sup> *Air France v Saks*, *supra* note 43 at 405.

<sup>52</sup> *Eastern Airlines, Inc. v. Floyd* (1991), *supra* note 48.

<sup>53</sup> See paragraph 5 ‘On Forum Non Conveniens’.

<sup>54</sup> See for instance, *KLM Royal Dutch Airlines v Morris* [2001] EWCA Civ 790; *King v Bristow Helicopters Ltd. (Scotland)*, [2002] UKHL 7; *Deep Vein Thrombosis and Air Travel Group Litigation* [2005] UKHL 72.

as being unexpected,<sup>55</sup> external to the passenger<sup>56</sup> and not attributable to the passenger or its condition.<sup>57</sup> Cross-border influence can also be found in the interpretation of the ‘international dimension’ of the carriage, which determines the territorial scope of application of the Conventions. The UK House of Lords Case *Sidhu v. British Airways* (1997)<sup>58</sup> is a prime example. Passengers of the British Airways flight sought damages for trauma and psychological harm after being forced to land in Kuwait and detained during the Gulf War for about a week. The House of Lords held that the 1929 Warsaw Convention was the exclusive remedy to be sought by passengers’ injury claims, effectively precluding claims for damages not specified under the convention. The case highlighted the exclusivity of the Convention for governing international air carrier liability as well as influenced how courts handle any related claims worldwide.

Finally, on the difficulty of the recognition of mental injury sustained during air travel, the *Olympic Airways v. Hussain* (2004)<sup>59</sup> of the US Supreme Court is a great example. In 2004, a passenger who was suffering with severe asthma died after being denied a change of seat on the plane and suffered second-hand smoke intoxication on an Olympic Airways flight. Despite the passenger’s repeated requests, a change of seat was always denied by the crew onboard. The case is of pivotal importance as the Supreme Court ruled that the failure to act on upon the request moved by the passenger constituted an ‘accident’ under the 1929 Warsaw Convention. The impact of the case is significant, as the ruling broadened the interpretation of ‘accident’ to include ‘omissions or refusals to act’, effectively influencing liability in future cases.

It is important to note that, for a long period of time, judges attached a particular importance to the uniformity of their interpretations, across jurisdictions in the name of comity and homogeneity. US and UK judges devoted significant efforts to interpret French legal concepts, such as in the above-mentioned *Eastern Airlines, Inc. v. Floyd*,<sup>60</sup> *Air France v. Saks*,<sup>61</sup> *Sidhu v. British Airways*<sup>62</sup>,

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<sup>55</sup> CA Rennes, 5e chambre, October 12, 2011, No. 10/04423; CA Paris, pôle 1, ch. 3, July 9, 2013, No. 12/22329; CA Nouméa, January 21, 2014, No. 13/00203; CA Nîmes, October 8, 2015, No. 14/05008.

<sup>56</sup> Cass 1<sup>re</sup> civ, November 29, 1989, [1989] Bull civ I 373, No. 88-13.772; Cass 1<sup>re</sup> civ, January 15, 2014, Bull civ I 7, No. 11-27.962; CA Paris, pôle 1, ch 2, February 12, 2015, No. 14/02471.

<sup>57</sup> Cass 1<sup>re</sup> civ, December 6, 1988, [1988] Bull civ I 349, No. 87-15.168; Cass 1<sup>re</sup> civ, January 15, 2014, [2014] Bull civ I 6, No. 11-21.394 ; See Cyril-Igor Grigorieff, *Uniformity and Fragmentation of the 1999 Montreal Convention on International Air Carrier Liability* (The Hague: Kluwer Law, 2022) at 88-90.

<sup>58</sup> *Sidhu v. British Airways*, *supra* note 50.

<sup>59</sup> *Olympic Airways v Hussain*, 541 U.S. 1007, 124 S.Ct. 2065 (2004).

<sup>60</sup> *Eastern Airlines, Inc. v Floyd*, *supra* note 48.

<sup>61</sup> *Air France v Saks*, 470 US 392 (1985).

<sup>62</sup> *Abnett v British Airways Plc (Scotland)* [1996], UKHL 5.

or *Burnett v. Trans World Airlines, Inc.*,<sup>63</sup> What's important to remember is that no matter the time or the geographical regions, the term 'accident' never really supported the inclusion of mental injury itself, allowing national legislation to fill the gap.

#### **4. An evolving landscape of case law: claims for mental injury under international air law**

More recent cases concerning claims for mental injury under international air law continue to explore the scope and limitations of such claims under the Montreal Convention of 1999. Some notable cases that have been explored and should be considered are *Doe v. Ethiad Airways* (2015)<sup>64</sup> and *Morris v. KLM Royal Dutch Airlines* (2002)<sup>65</sup>.

*Doe v. Etihad Airways* (2015) is a U.S. District Court case for the Eastern District of Michigan, which was brought on by a passenger who claimed to have suffered mental anguish after having pricked her finger on a hypodermic needle that was hidden in the pocket of her seat, drawing blood. The plaintiff, Jane Doe, was returning from Abu Dhabi to Chicago aboard a flight operated by Etihad Airways (Etihad) and was given a band aid to fix the problem. She claimed the incident caused her severe emotional distress and panic attacks. The passenger argued that the presence of blood constituted an 'accident' under Article 17 of the 1999 Montreal Convention<sup>66</sup>. Further, she claimed the airline's failure to maintain a clean and safe environment which led to her mental injuries. The defendant, Etihad Airways, contended that the 1999 Montreal Convention did not cover purely mental injuries unless accompanied by physical injury. The ruling of the Sixth Circuit U.S. Court of Appeal on *Etihad* radically altered the scope of an air carrier's liability under the Montreal Convention, concluding that passengers may be able to recover for emotional damages that are completely divorced from any bodily injury sustained. In doing so, *Etihad* departs from nearly a century of jurisprudence on this issue, both domestically and internationally.

Mental injury and anguish are not the only evolution on the interpretation of 'accident' under article 17 of the Montreal Convention of 1999. *Morris v. KLM Royal Dutch Airlines* (2002) is a case brought in front of the Court of Appeal of England and Wales, where a passenger, a minor, sued KLM Royal Dutch Airlines for post-traumatic stress disorder (PTSD) after traveling alone

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<sup>63</sup> *Burnett v Trans World Airlines, Inc.*, 368 F. Supp. 1152 (D.N.M. 1973).

<sup>64</sup> *Doe v. Ethiad Airways*, 870 F.3d 406 (6th Cir. 2017).

<sup>65</sup> *KLM Royal Dutch Airlines v Morris* [2001] EWCA Civ 790.

<sup>66</sup> *Etihad*, 870 F.3d at 433.



on a KLM flight, awoke to find a passenger inappropriately touching Morris's leg. Morris immediately advised a flight attendant, who moved Morris to a different seat. Morris was subsequently diagnosed with clinical depression and sued KLM, asserting injury under Article 17 of the Convention. The defendant, KLM, argued that the Montreal Convention does not permit recovery for purely mental injuries unless there is an accompanying physical injury. The Court of appeal, cited *McLoughlin v O'Brian* (1982) of the House of Lords:<sup>67</sup>

“Yet an anxiety neurosis or a reactive depression may be recognizable psychiatric illnesses, with or without psychosomatic symptoms. So, the first hurdle which a plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress or any other normal emotion, but a positive psychiatric illness. The Court of Appeal allowed the claim, stating that the violent incident could qualify as an ‘accident’ under the Montreal Convention of 1999. This case is pivotal in demonstrating the evolving understanding of what constitutes an ‘accident’ and whether it includes events causing mental distress.”

These cases illustrate the ongoing legal debates about whether mental injuries, particularly those without accompanying physical injuries, fall under the purview of ‘accidents’ as defined by the 1999 Montreal Convention. Courts are increasingly scrutinizing the nature of incidents during flights and their impact on passengers' mental health, but the prevailing legal framework continues to impose significant challenges for claims based solely on mental anguish.

## **5. On Forum Non Conveniens**

The Warsaw Convention 1929 and the Montreal Convention 1999 aim at addressing, as per their title, only ‘certain aspects’ of contractual liability.<sup>68</sup> Therefore, their application is limited and gives rise to a certain level of fragmentation. Firstly, national legislation always plays a significant role for all matters not covered by the relevant Convention<sup>69</sup>, hence applying different aspects of Civil or Common Law elements, depending on the *forum*. Secondly, references to national legislations may also be found in those international instruments directly – e.g. Article 24(2) Warsaw Convention 1929 and Article 29 of the Montreal Convention 1999, both referring to the

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<sup>67</sup> *McLoughlin v O'Brian*, UKHL J0506-3 (1982).

<sup>68</sup> The contents of this paragraph have been greatly inspired by the teachings and insights of Public Air Law Professor Vincent Correia, Co-Director, Institute of Air and Space Law at McGill University, Montréal, Canada. For reference see Richard C. Coyle, “Choice of Law in International Aviation Accidents” (Spring 1981) 16:4 The Forum ABA at 658-78.

<sup>69</sup> Peter H. Sand, “Limitation of Liability and Passengers’ Accident Compensation under the Warsaw Convention” (1962) 11:1 Am J Comp L 21 at 29.

*lex fori* for the determination of the persons entitled to bring suit before a court. Those references automatically allow for entry of certain aspects of national legislation to be applied by judges.<sup>70</sup> In the words of G. MILLER:

All the differences introduced between actual cases because of the *renvoi* made by the uniform law are simply a consequence of the policy decision made by the drafters of the text to let each legal system rule in certain areas – usually of a sensitive nature – where no agreement as to the substance was seen as possible, or desirable.<sup>71</sup>

This method is more heavily present in the Warsaw Convention of 1929. As an example, article 21 refers to national law for matters of contributory negligence of the victim; article 22(1) affirms that ‘in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments’; article 25(1) provides that, if any, the default equivalent to willful misconduct must be determined in accordance with national law; finally, Article 29 regarding the method of calculating the period of limitation of actions, left the method itself to the discretion of national law. Most importantly, article 28(2) of the Warsaw Convention 1929 and article 33(4) of the Montreal Convention 1999 determine that ‘questions of procedure shall be governed by the law of the Court seized of the case.’ This reference to national law is justified because of the impossibility to provide a uniform set of procedural rules through any of the two international instruments. Though this might have been the best option for the adoption of those treaties, it led to conflicting interpretations of the terms ‘questions of procedure’. This is highlighted especially in the vivid opposition between French and American judges on the *forum non conveniens* (FNC) matter.<sup>72</sup> To this end, a specific case may be brought forward. After the *West Caribbean* disaster,<sup>73</sup> the families of the victims of the air disaster involving flight WCW-708 sought to bring their claim in front of US Courts. They did so by availing themselves of and drawing on the *Hosaka* ruling<sup>74</sup> and article 33 the 1999 Montreal Convention. The defendant filed a motion to dismiss invoking

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<sup>70</sup> Lureau, Daniel Lureau, *La responsabilité du transporteur aérien – Lois nationales et convention de Varsovie* (Paris: LGDJ, 1961) at 5.

<sup>71</sup> See Georgette Miller, *Liability in International Air Transport – The Warsaw System in Municipal Courts* (Deventer: Kluwer Law, 1977) at 337.

<sup>72</sup> See *Piper Aircraft Co. v Reyno*, 454 US 235 (1981); *Trivelloni-Lorenzi v Pan Am*, 821 F.2d 1147, 1168 (5<sup>th</sup> Cir. 1987).

<sup>73</sup> See David Cluxton, “The West Caribbean Conundrum: The United States versus France on the Availability of Forum Non Conveniens under the Montreal Convention of 1999” (2020) 85:1 J Air L & Com 3; Allan I. Mendelsohn & Carlos J. Ruiz, “The United States vs. France: Article 33 of the Montreal Convention and the Doctrine of Forum Non Conveniens” (2012) 77 J Air L & Com 467.

<sup>74</sup> *Hosaka v. United Airlines Inc.*, 305 F.3d 989 (9<sup>th</sup> Cir. 2002).

the common law doctrine of FNC, that was later granted by the judge.<sup>75</sup> At the same time, the French ‘*Cour de Cassation*’ – the highest-level civil court in France - adopted a strict interpretation of article 33 of the Montreal Convention 1999 and declared the unavailability of the French court,<sup>76</sup> based on the choice made by the plaintiffs. This under the argument that jurisdiction of the chosen *forum* is mandatory if it counts among the ones listed under article 33 of the Montreal Convention 1999. Yet, the US Court refused to have the FNC order vacated,<sup>77</sup> raising the fear of negative conflict of jurisdiction and denial of justice. Notwithstanding the tenuous links of the case with US soil and the fact that the actions brought in France were requesting the French Courts to declare themselves *without* jurisdiction, the contractual air carrier (Newvac) was incorporated in the US. As such, the US was an available jurisdiction. By dismissing their claim because of the FNC doctrine, the US judges disregarded the clear wording of article 33(1) of the Montreal Convention 1999: ‘at the option of the plaintiff.’<sup>78</sup> Furthermore, even if it is true that article 33(4) the 1999 Montreal Convention refers to the law of the court seized of the case, such a reference should not have the effect of allowing to circumvent the substantial provisions of article 33 the 1999 Montreal Convention.<sup>79</sup>

## 6. Advanced Payments in the Montreal Convention 1999

The Montreal Convention of 1999 significantly modernized the legal framework governing international air travel. Specifically, for the purposes of this work, provisions on advanced payments in cases of passenger death or injury will be discussed. Advanced payments are designed to provide immediate financial assistance to affected passengers or their families while the full compensation claim is processed. Provisions on ‘advanced payments’ are enshrined in Article 28 Montreal Convention 1999 and are designed to ensure that victims of air accidents or their families receive prompt financial relief to cover immediate needs following an accident or air crash. Specifically, the airlines are obligated to make an advanced payments ‘without delay’ in the event

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<sup>75</sup> *Order Granting Defendants’ Motion to Dismiss on Grounds of Forum Non Conveniens at 15, In re West Caribbean Airways*, 619 F. Supp. 2d 1299 (No. 06-22748-CIV).

<sup>76</sup> Cass civ 1<sup>re</sup>, December 7, 2011, [2011] Bull civ I 210, No. 10-30.919.

<sup>77</sup> *Order on Motion to Vacate, In re West Caribbean Airways*, No. 06-22748-CIV (S.D. Fla. May 16, 2012), 2012 WL 1884684.

<sup>78</sup> For more see Paul Stephen Dempsey, “Aviation Liability Law” (Eds.) Chapter 1, Introduction, V. Forum non conveniens.

<sup>79</sup> This would go against the object and purpose of the treaty, as well as contradict article 31(1) Vienna Convention on the Law of Treaties 1969, Vienna, May 23, 1969, 1155 UNTS 331 (entered into force on January 27, 1980).

a passenger is killed or injured. An advanced payment is not an admission of liability by the airline, but it is provided to alleviate the immediate financial needs and hardship that a family or a passenger might have to endure. Moreover, the advance payment is deductible from the final amount of compensation that will be awarded. And, in the case it is later determined that the airline is not liable, or that the recipient was not entitled to compensation, the airline may seek the recovery of any advance payment already made.

As mentioned, one of the main characteristics of the advance payments are their immediacy. Indeed, they are designed to be made promptly after the identification of the persons entitled to compensation. The Montreal Convention 1999 emphasizes that such payments should be made speedily to address the urgent needs arising from the accident, however it does not strictly specify a fixed amount for advance payments, leaving national laws and airline policies special leeway in such determination. Nevertheless, the amount is intended to be sufficient to cover the immediate expenses that the family or passenger might incur to, such as medical expenses, funeral expenses, and basic living costs for the victim's family. Beneficiaries or recipients of advance payments are usually the passengers who have been injured or, in case of death, their immediate family members or 'next of kin', as established by national legislations. Airlines must identify the rightful beneficiaries before making the payments, which often requires some form of proof of entitlement or relationship.

As an example, there are several national laws and airline policies that have been implemented to support the system of advanced payments. Countries have implemented specific regulations detailing the process, as well as amounts of advanced payments to be assigned based on the Montreal Convention of 1999. Airlines also have their policies, which may provide guidance on the amounts and procedures for issuing these payments. For instance, in the European Union, Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents<sup>80</sup> mandates that air carriers operating flights within the EU must make advance payments sufficient to meet immediate economic needs, proportional to the hardship suffered. Furthermore, in the event of any major accident or air disaster, airlines often issue public statements outlining their commitment to providing advanced payments. For instance, after the crash of Air France Flight

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<sup>80</sup> Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (Text with EEA relevance)

447 in 2009<sup>81</sup>, Air France announced it would provide initial financial assistance to the families of the victims, consistent with the 1999 Montreal Convention's requirements.

Advance payments hold a specific significance that should be explored. More than just a system of financial support, advance payments represent a system of humanitarian relief, social responsibility and passengers' rights protection. As for the first, such payments are crucial in providing humanitarian relief, helping victims and their families manage urgent financial pressures following the unexpected accident.<sup>82</sup> Socially, while these payments are not an admission of liability, they demonstrate the airline's commitment in supporting the affected passengers and their families. They also streamline the compensation process, reducing the time victims must wait for financial support. Finally, the provision of advanced payments under the Montreal Convention of 1999 reflects a broader trend towards strengthening passenger rights and ensuring more comprehensive protection for air travelers.

To sum up, Article 28 of the Montreal Convention on advanced payments addresses the immediate financial needs of passengers injured in air accidents and the families of those killed. By requiring airlines to provide prompt financial assistance, such payments help mitigate the immediate economic impact of air tragedies, while the formal process of determining full compensation continues. This is a great approach in balancing humanitarian concerns with legal and procedural fairness, ensuring timely support for those affected by aviation accidents, which will be further explored in the upcoming pages.

### **6.1. Air crash disasters and the liability system: damages and their calculation**

The modernized framework in the Montreal Convention 1999 that replaced the 1929 Warsaw Convention for many countries, established a more updated and comprehensive liability regime. Indeed, by introducing a new two-tier system for compensation, the later instrument allowed for the important two-tier system of liability. In the first tier that liability is strict and up to 113,100 SDR, approximately USD \$138,000, regardless of fault. In the second-tier liability is unlimited if the airline is proved to be at fault. Airlines can bring a defense by proving that the damage was not

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<sup>81</sup> See Nick Oliver, Thomas Calvard, and Kristina Potočnik (2017) "The Tragic Crash of Flight AF447 Shows the Unlikely but Catastrophic Consequences of Automation", Harvard Bus Rev online at <[hbr.org/2017/09/the-tragic-crash-of-flight-af447-shows-the-unlikely-but-catastrophic-consequences-of-automation](http://hbr.org/2017/09/the-tragic-crash-of-flight-af447-shows-the-unlikely-but-catastrophic-consequences-of-automation)>.

<sup>82</sup> On the advocacy side, the Assistance to Aircraft Accident Victims and their Families is pivotal. More at <[aircrashvictims.com/activity/icao/aaavf-2021/](http://aircrashvictims.com/activity/icao/aaavf-2021/)>.

due to their negligence or caused solely by a third party. Claims related to passenger deaths in air law are governed primarily by international treaties such as the Warsaw Convention of 1929 and the Montreal Convention of 1999. These conventions establish the framework for liability, compensation, and procedures for handling claims in the event of a passenger's death during international air travel. In the case of air disasters or air crashes, advanced payments are made to facilitate and assist families of air crash victims in immediate economic needs and can be deducted from any final compensation awarded. This because families of victims will most often claim damages for the accident. Claims follow the system introduced by the Warsaw Convention 1929 and Montreal Convention 1999.<sup>83</sup> Claims for passenger deaths in international air travel are governed by a well-defined legal framework established by the Warsaw Convention and the Montreal Convention. These conventions provide mechanisms for compensation, liability limits, and procedures to ensure that victims' families receive appropriate financial support. Recent case law continues to interpret and apply these provisions, balancing the interests of passengers and airlines in the context of evolving international air travel standards.

There are three elements that play into the assessment of damages: pecuniary, non-pecuniary and, finally, the calculations and limitations to make the assessment.<sup>84</sup> Firstly, pecuniary damages refer exactly to compensation for economic losses, including financial support, medical expenses prior to death, and funeral expenses.<sup>85</sup> Secondly, non-pecuniary damages cover non-economic losses, such as pain and suffering, loss of companionship, and emotional distress suffered by the deceased's family.<sup>86</sup> Finally, to assess those parameters, calculations are greatly important. Compensations amounts are often calculated based on the victim's age, earning capacity, and financial dependency of the beneficiaries. Those calculations have become incredibly relevant, as national jurisdictions have taken into considerations, such as mental injury and factors above more and more.<sup>87</sup>

### **6.1.1 Pecuniary Damages**

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<sup>83</sup> 1929 Warsaw Convention, *supra* note 5, Article 28 and 1999 Montreal Convention, *supra* note 6, Article 33.

<sup>84</sup> Robert F. Hungerford, Rupert M., Shore, "Damages: A Catalyst for Jurisdictional Disputes in Aviation Accidents" (1996-1997) 62 J. Air L. & Com. 1037

<sup>85</sup> *Idem.*

<sup>86</sup> *Idem.*

<sup>87</sup> See Chapter 3, Para 1.1

Pecuniary damages refer to the economic losses suffered by the beneficiaries of the deceased passenger and are intended to compensate for measurable financial impacts resulting from the death. Pecuniary damages follow a specific pattern, just like courts' rulings. Components of pecuniary damages include loss of financial support, medical expenses and funeral and burial costs. The first includes compensation for the loss of financial support that the deceased would have provided to their dependents. The second ensures the reimbursement for medical expenses incurred prior to the passenger's death. Lastly, compensation is provided for the funeral and burial expenses. For instance, in the *In Re Air Crash Disaster at Taipei, Taiwan* (2002)<sup>88</sup> case, the crash of Singapore Airline Flight SQ006 resulted in multiple fatalities. In its ruling the court awarded substantial pecuniary damages to the families of the deceased, including loss of future earnings and funeral expenses. The calculations were based on the victims' earning capacities and the financial dependency of their families. Notably, a few days after the incident, Singapore Airlines (SIA) had provided immediate financial relief of US\$5,000 to each survivor, while for every passenger or crew member who perished, SIA had offered US\$25,000 to their families.<sup>89</sup> It was revealed soon after that SIA had offered US\$400,000 to 'next-of-kin' of victims who perished in the crash.<sup>90</sup> However, over 30 survivors and families of crash victims rejected the offer and sued the airline for higher damages.<sup>91</sup> A total of 40 lawsuits (26 involving passengers and 14 involving crew members) were filed against SIA in Singapore, and more than 60 passenger lawsuits were filed in the United States. All were settled out of court by October 2006.<sup>92</sup> Also, in the *Zicherman v. Korean Air Lines Co.* (1996)<sup>93</sup> case, on the shooting down of Korean Air Lines Flight 007 by a Soviet fighter jet, the U.S. Supreme Court upheld the award of pecuniary damages under the Warsaw Convention, focusing on loss of financial support and the need for compensation based on the decedent's potential future earnings. The case dealt extensively<sup>94</sup> with topics such as pre-

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<sup>88</sup> *In Re Air Crash Disaster at Taipei, Taiwan*, 219 F. Supp. 2d 1069 (C.D. Cal. 2002).

<sup>89</sup> The Straits Times, "We're Deeply Sorry" (2 November 2000) at 6; The Straits Times, "Quick Move into Crisis Control" (2 November 2000) at 6.

<sup>90</sup> Pauline Leong, "SIA May Face Massive Lawsuits," (7 November 2000) The Straits Times, at 33.

<sup>91</sup> "Deadline to Sue", Today, 30 October 2002 at 12 online <resources.nlb.gov.sg/newspapers/digitised/article/today20021030-2.2.16.4>.

<sup>92</sup> Karamjit Kaur, "2 Cabin Crew Get Payouts as SIA Settles Last SQ006 Lawsuits in S'pore," The Straits Times, 17 October 2006, 1.

<sup>93</sup> *Zicherman v. Korean Air Lines Co.*, 84 F.3d 446, 318 U.S.App. D.C. 6 (1996).

<sup>94</sup> Available online at <case-law.vlex.com/vid/forman-v-korean-air-88935577>

death pain, loss of financial contributions and household services, grief, mental anguish, and loss of society, which will be further discussed.

### **6.1.2 Non-Pecuniary Damages**

Non-pecuniary damages address the emotional and psychological impact of the loss, which are not easily quantifiable in monetary terms. Historically, non-pecuniary damages have been considered sporadically, although consistently in content. Generally, non-pecuniary damages include pain and suffering, as compensation for the physical pain and emotional suffering experienced by the deceased passenger prior to their death; loss of companionship, in terms of compensation to the loss of love, companionship, care, guidance suffered by the family members of the deceased; and, emotional distress, entailing compensation for the emotional trauma and mental anguish experienced by the family due to loss of their loved ones.<sup>95</sup> One of the cases worth mentioning as an example of the hardship for the recognition of mental anguish and suffering, is the previously mentioned *Eastern Airlines, Inc. v. Floyd* (1991). In this case passengers on the Eastern Airlines flight sought damages for mental anguish after the aircraft experienced severe engine failure and descended rapidly before recovering and landing safely. In this instance, the U.S. Supreme Court held that the Warsaw Convention did not allow recovery for purely mental injuries unaccompanied by physical injury. This ruling set a precedent that mental anguish alone is not compensable unless it accompanies physical harm. However, in *Olympic Airways v. Husain* (2004)<sup>96</sup>, when a passenger with severe asthma died after being exposed to secondhand smoke on an Olympic Airways flight because the airline had refused repeated requests to move him to a non-smoking area, the airline's failure to act constituted an 'accident' under the Warsaw Convention, expanding the understanding of what constitutes an 'accident' and allowed for the recovery of damages for the loss sustained. The scope of non-economic damages has only grown with time, particularly with the shooting

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<sup>95</sup> ICAO, 38<sup>th</sup> Assembly, A38-WP/301 and Corrigendum No. 1, Assistance to Aircraft Accident Victims and their Families. Amend Annex 9 as follows: 8.45 Recommended Practice “*States should establish legislation, regulations and/or policies in support of aircraft accident victims and their families*”.

*Note:* Attention is drawn to *Doc 9998*, ICAO Policy on Assistance to Aircraft Accident Victims and their Families and *Doc 9973*, Manual on Assistance to Aircraft Accident Victims and their Families.

<sup>96</sup> *Olympic Airways v. Husain*, 316 F.3d (2004) at 837.



down of Korean Air Lines Flight 007 by a Soviet fighter jet,<sup>97</sup> as well as other cases such as the Übelingen<sup>98</sup> and Malaysia Airlines Flight MH370 (2014).<sup>99</sup>

### **6.1.3 Punitive Damages**

Generally, punitive damages are intended to punish the defendant for particularly egregious conduct and deter future misconduct. However, punitive damages are generally not available under the Warsaw and Montreal Conventions. The types of damages available in passenger death claims under international air law primarily include pecuniary and non-pecuniary damages. Punitive damages are generally not available under the 1929 Warsaw and 1999 Montreal Conventions. Case law examples illustrate how courts have applied these principles to provide fair compensation to the families of deceased passengers.

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<sup>97</sup> Hassan, Farooq, “The Shooting down of Korean Airlines Flight 007 by the USSR and the Future of Air Safety for Passengers” (1984) 33:3 *The International and Comparative Law Quarterly* 712–725.

<sup>98</sup> Bennett, Simon “The 1st July 2002 Mid-Air Collision over Überlingen, Germany: A Holistic Analysis” (2004) 6:1 *Risk Management* 31–49.

<sup>99</sup> McNutt, Marcia “EDITORIAL: The hunt for MH370” (2014) 344:6187 *Science* at 947.



## **Chapter 2**

### **The role of ICAO, international associations, liability and insurance companies in air crashes: focusing on family assistance**

#### **1. The role of the International Civil Aviation Organization**

As it has been shown, when it comes to accidents, mental injury has been one of the hardest fields to introduce and explore in case law as well as practice. The recognition of its key importance after mass tragedies, such as air crash accident, often found the resistance in precedent and preparatory work. Although it is understandable that the industry in 1929 did not hold as its primary focus the mental health of its passenger, as priorities remained closer to safety and operations, nowadays it has become a topic inextricably linked to bodily injury, loss, grief and recovery. While the law has been resisting any change, workings from International Organizations, Associations, as well as law professionals, have helped shape the relevance of what needs to be a new field of practice.<sup>100</sup> Firstly, the International Civil Aviation Organization (ICAO)<sup>101</sup> plays a significant role in promoting family assistance policies for victims and families affected by aviation accidents. ICAO's initiatives aim to ensure that affected individuals will receive compassionate and comprehensive support in the aftermath of an air crash. More specifically, family assistance has been ensured through the development of guidelines and policies that are able to assist member

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<sup>100</sup> Jiefang Huang, *Aviation Safety through the Rule of Law – ICAO's Mechanisms and Practices* (Alphen aan den Rijn: Kluwer Law International, 2009).

<sup>101</sup> International Civil Aviation Organization (ICAO). Resources available at <icao.int>.

states and airlines in providing support to the victims as well as their families. Guidelines cover various aspects of family assistance – from crisis response to long-term support services.<sup>102</sup> These two ICAO documents on “Policy on Assistance to Aircraft Accident Victims and their Families” (Doc 9998)<sup>103</sup> and “Manual on Assistance to Aircraft Accident Victims and their Families” (Doc 9973)<sup>104</sup> are very important. The first outlines the principles and best practices to provide and speedy and effective assistance to aircraft accident victims and their families. Doc. 9998 emphasizes the need for an immediate and coordinated approach involving airlines, states and relevant entities. The second document, Doc. 9973, is a manual that provides detailed guidance on implementing family assistance programs. It covers topics such as crisis management<sup>105</sup>, communication with families<sup>106</sup>, support<sup>107</sup>, and logistical arrangements<sup>108</sup>. All those topics are pivotal in assessing and assisting victims and their families.

As an example, ICAO’ Assembly<sup>109</sup> Resolution A32-7<sup>110</sup> urged the Council to develop material, which could include Standards and Recommended Practices, to support victims of civil aviation accidents and their families. Accordingly, ICAO Circ 285, *Guidance on Assistance to Aircraft Accident Victims and their Families* was published in 2001, and in 2005 provisions were included in ICAO Annex 9 — *Facilitation* to enable expeditious entry in the State of Occurrence of an accident for family members of victims of aircraft accidents. Acknowledging that further action was necessary to promote the assistance to victims and their families, the Council approved in March 2013 an ICAO policy document on this subject. Indeed, resolution A32-7 was later suppressed by Resolution A38-1, calling on

- a) “Member States to reaffirm their commitment to support victims of civil aviation accidents and their family members”; It further urged “Member States to establish legislation, regulations and/or

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<sup>102</sup> For instance, ICAO Doc 9998 and 9973.

<sup>103</sup> ICAO, Policy on Assistance to Aircraft Accident Victims and their Families (Doc 9998) available at <[www.icao.int/WACAF/Documents/Meetings/2015/ICAO-BEA/9998\\_cons\\_fr.pdf#search=doc%209998](http://www.icao.int/WACAF/Documents/Meetings/2015/ICAO-BEA/9998_cons_fr.pdf#search=doc%209998)>.

<sup>104</sup> ICAO, Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973) available at <[www.icao.int/SAM/Documents/2016-AIG-RECORDSPRO/Doc%209973.Family%20Assistance\\_en.pdf](http://www.icao.int/SAM/Documents/2016-AIG-RECORDSPRO/Doc%209973.Family%20Assistance_en.pdf)>.

<sup>105</sup> *Ibid.*, Chapter 3.

<sup>106</sup> *Idem.*

<sup>107</sup> *Idem.*, Chapter 3 at 3.27-3.29, 3.33.

<sup>108</sup> ICAO, Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973), *supra* note 104, Chapter 3.

<sup>109</sup> The ICAO Assembly meets every three years. For more see Ludwig Weber, (Wolters Kluwer 2017) “International Civil Aviation Organization (ICAO)”.

<sup>110</sup> Resource available online <[icao.int/Meetings/AAAVF2021/Documents/Reference/Assembly%20Resolution%20A32-7.pdf](http://icao.int/Meetings/AAAVF2021/Documents/Reference/Assembly%20Resolution%20A32-7.pdf)>.

policies to support victims of civil aviation accidents and their family members, in consideration of the ICAO Policy in Doc 9998”.

- b) Encourag[ing] States “that have legislation, regulations and/or policies to support civil aviation accident victims and their families to review these documents, as necessary, in consideration of the ICAO Policy in Doc 9998”; and
- c) Urg[ing] “the Council to give further consideration to the development of Standards and Recommended Practices regarding the establishment by States of legislation, regulations and/or policies to support victims of civil aviation accidents and their family members”<sup>111</sup>

ICAO serves different ‘functions’ encouraging national legislations, promoting international cooperation and partnerships, as well as providing technical assistance, support and guidance. It also encourages member states to enact national legislation that mandates family assistance plans for airlines operating within their jurisdictions. By advocating for regulatory frameworks, ICAO aims to ensure that all airlines have robust family assistance plans in place. Today, ICAO Annex 9 to the Chicago Convention 1944<sup>112</sup> includes important provisions related to family assistance, specifically urging member states to require airlines to have family assistance plans and to ensure that appropriate support is provided to accident victims and their families.

Part of this work will focus also on the improvement and the possible synergies and convergencies that may benefit the industry when mental injury, together with family assistance, will be properly addressed and concretely approached by all major players. To that end, in 2021, during the AAACFV<sup>113</sup> Symposium “[t]here [were] four fundamental concerns to consider when States develop comprehensive family assistance programmes:

- a) initial notification of involvement (to all involved stakeholders);
- b) victim accounting and identification of corpses;
- c) access to information and resources for affected parties to be ensured by States, aircraft and airport operators, etc.; and
- d) management of personal effects of the victims and their return to the families.”<sup>114</sup>

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<sup>111</sup> Resource available online  
<[icao.int/Meetings/AAAVF2021/Documents/Reference/Assembly%20Resolution%20A38-1.pdf](https://www.icao.int/Meetings/AAAVF2021/Documents/Reference/Assembly%20Resolution%20A38-1.pdf)>.

<sup>112</sup> ICAO, Annex 9 – Facilitation, available at <[elibrary.icao.int/product/256255](https://www.library.icao.int/product/256255)>.

<sup>113</sup> The Assistance to Aircraft Accident Victims And Their Families (AAAVF 2021) Symposium was held in Las Palma De Gran Canaria, Spain from 1 to 3 December 2021.

<sup>114</sup> ICAO Report, AAAVF2021, 1 to 3 December 2021 at 1.3.9.

On top of that, the Symposium supported four specific outcomes:

- “a) multiple Assembly resolutions emphasizing issues related to the importance of timely notification to family members of victims involved in aircraft accidents, the prompt recovery and accurate identification of victims, the return of the victims’ personal effects and dissemination of accurate information to family members;
- b) publication of reference materials, namely the ICAO Policy defined in Doc 9998 and the guidance for implementation defined in Doc 9973;
- c) addition of SARPs to Annex 9 to complement Annex 13 [- accident investigation] and Annex 14 — Aerodromes; and
- d) establishment of 20 February as the International Day Commemorating Air Crash Victims and their Families.”<sup>115</sup>

After the Symposium, the ICAO Council adopted Amendment 29 to ICAO Annex 9 — Facilitation which has elevated Recommended Practice 8.46 to Standard 8.47, thus obliging States to establish legislation, regulations, and policies in support of assistance to aircraft accident victims and their families.

Historically and to this day, ICAO serves as facilitator and promotes international cooperation. By doing so, member States can effectively enhance their family assistance policies. ICAO activities to promote such work include the organization of workshops, conferences, and training session with the goal to share best practices and improve preparedness.<sup>116</sup> Some of the key initiatives that have been promoted by the organization comprehend global and regional conferences and partnerships with other organizations. ICAO’s global and regional conferences serve as ground where experts and stakeholders can discuss common challenges and envisage solutions related to family assistance in aviation accidents. These forums provide opportunities for exchanging experiences and improving response strategies.<sup>117</sup> As for partnerships, those are an excellent example of the multi-dimensional nature of air accidents and their consequences. ICAO’s

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<sup>115</sup> *Idem*, at 1.3.10.

<sup>116</sup> Response has been implemented quite extensively on the aircraft recovery and risk management side. However, it covers passengers only partly through advanced payments. This author argues that the notion of preparedness should also entail measures of psychological support, particularly in the case of air crash victims and their families. For instance IATA’s Aircraft Recovery Strategic Partnership program, available at < [iata.org/en/about/sp/areas/aircraft-recovery-strategic-partnerships-program/](http://iata.org/en/about/sp/areas/aircraft-recovery-strategic-partnerships-program/) >.

<sup>117</sup> Strong value and relevance should be focused on the response strategies as well – e.g. cooperation with mental health professionals, platforms etc.

partnership is well spread and includes the International Air Transport Association (IATA)<sup>118</sup> and the International Federation of Air Line Pilots' Associations (IFALPA), to promote cohesive and comprehensive family assistance frameworks<sup>119</sup>.

Lastly, ICAO provides technical assistance and support to its member states in developing and implementing their family assistance programs by providing expert advice, developing and conducting training programs, and sharing resources and best practices. Particularly, in the context of family assistance, ICAO focuses on conducting capacity-building programs that help enhance member states' capabilities in the management of family assistance.<sup>120</sup> In the words of ICAO Council president, Mr. Salvatore Sciacchitano:

“Respect for victims of aircraft accidents and their families' mental, physical and spiritual well-being is paramount to ICAO and to all aviation stakeholders. With the help of the insights and appeals of committed representatives of victims and their families and the support of all stakeholders, the ICAO Council is assuring continuous advocacy and attention for these important global priorities, and helping States set the regulatory framework through the provisions of the Convention on International Civil Aviation. In this regard, ICAO elevated an existing Recommended Practice to a Standard in 2022, thus heightening the responsibility on States to establish legislation, regulations and policies in support of assistance to aircraft accident victims and their families.”<sup>121</sup>

These programs focus on different aspects of support, such as training personnel, developing response plans, and improving coordination among different agencies. The practical application of ICAO's guidelines and policies can be observed in several high-profile aviation accidents where family assistance programs have been effectively implemented. Major examples of family assistance response can be found in the *Malaysia Airlines Flight MH370* (2014)<sup>122</sup> where, following the disappearance of Flight MH370 Malaysia Airlines, supported by international agencies and ICAO guidelines, states established comprehensive family assistance programs. These programs included communication updates, support, and financial assistance for the families

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<sup>118</sup> International Air Transport Association (IATA), Aircraft Recovery Strategic Partnership program, available at <[iata.org/en/about/sp/areas/aircraft-recovery-strategic-partnerships-program/](http://iata.org/en/about/sp/areas/aircraft-recovery-strategic-partnerships-program/)>.

<sup>119</sup> IFALPA, Pilot Assistance Program, Available at <[ifalpa.org/media/3841/pilot-assistance-manual-2022.pdf](http://ifalpa.org/media/3841/pilot-assistance-manual-2022.pdf)>.

<sup>120</sup> ICAO Assistance to Aircraft Accident Victims and Their Families (AAAVF), Instructor-led training, online <[store.icao.int/en/aircraft-accident-victims-assistance-training](http://store.icao.int/en/aircraft-accident-victims-assistance-training)>.

<sup>121</sup> Salvatore Sciacchitano, ICAO Council President, addressing the *International Day Commemorating Air Crash Victims and their Families*, (20 February 2024) resource available <[icao.int/Newsroom/Pages/Enhancing-support-for-air-crash-victims-and-their-families.aspx](http://icao.int/Newsroom/Pages/Enhancing-support-for-air-crash-victims-and-their-families.aspx)>.

<sup>122</sup> *Malaysia Airlines Flight MH370*, supra note 99.

of the victims.<sup>123</sup> A second major example is the Germanwings Flight 9525 (2015)<sup>124</sup>, where Lufthansa, the parent company of Germanwings, compensated the families of the victims, including immediate financial aid, counseling services, and assistance with travel and accommodation arrangements for memorial services. Although those measures and compensation was strongly criticized, these efforts were aligned with ICAO's guidelines on family assistance.<sup>125</sup> In fact, In preparation of the 39th Session of the ICAO Assembly, an initiative was launched by the EU, the EU Member States, the European Civil Aviation Conference (ECAC), and Eurocontrol to the Technical Commission of the ICAO.<sup>126</sup> The ICAO was requested:

- (1) to establish a Task Force on Aviation Medicine to analyze, in the light of information derived from recent aviation accidents where a mental health condition has been identified as a causal factor to the accident, the risks associated with flight crew mental fitness, and the aeronautical medicine current evaluation system (including self-declaration and medical verification) taking into account the social and psychological context of pilots undergoing aeromedical evaluation and the need to avoid any negative side effects; and
- (2) to adopt, where relevant adequate risk mitigation measures, including the development of new requirements, or the revision of the existing ones.”<sup>127</sup>

Although not perfect, ICAO plays a pivotal role in ensuring that family assistance for aviation accident victims and their families is provided promptly and effectively. Through the development of guidelines and policies, facilitating international cooperation, encouraging national legislation, and providing technical support, ICAO aims to standardize and improve family assistance programs worldwide. The implementation of these initiatives in various aviation accidents highlights the importance and effectiveness of ICAO's role in this critical aspect of aviation safety and humanitarian response.

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<sup>123</sup> “Crisis Communications Case Study - Background Material, Malaysia Airlines Incident (Flight MH 370 - KUL to PEK)”, Aviationemergencyresponseplan, 08 March 2014.

<sup>124</sup> See 3rd Annual National Institute on Aviation Litigation (Chicago: American Bar Association., 2017); Scott Brooksby & Brian J. Alexander, "What Can Be Done about Pilot Depression, Suicide, and Other Flight Crew Mental Health Issues" [2018] 16:2 Mass Torts Litig 12; BBC News (2017) “Germanwings crash: What happened in the final 30 minutes” available at <[bbc.com/news/world-europe-32072218](http://bbc.com/news/world-europe-32072218)>.

<sup>125</sup> See Marcus Schladebach, "The Germanwings Disaster: Legal Debates and Consequences" (2016) 59 German YB Int'l L 603; An interesting storytelling is offered online < [admiralcloudberg.medium.com/the-madness-in-our-methods-the-crash-of-germanwings-flight-9525-and-our-broken-aeromedical-system-5b95abd4fe6d](https://admiralcloudberg.medium.com/the-madness-in-our-methods-the-crash-of-germanwings-flight-9525-and-our-broken-aeromedical-system-5b95abd4fe6d)>.

<sup>126</sup> Marcus Schladebach, *supra* note 125 at 610.

<sup>127</sup> International Civil Aviation Organization (ICAO) Working Paper A39-WP106, 12 August 2016.



## 2. The Überlingen Mid-Air Collision: mental health and important legal outcomes

The Überlingen mid-air collision<sup>128</sup> is one of the possibly most famous and mentioned accidents when it comes to air travel. It occurred in Germany on July 1, 2002, and involved a passenger jet operated by Bashkirian Airlines<sup>129</sup> and a cargo jet operated by DHL<sup>130</sup>. The collision resulted in the deaths of 71 people, including many children. Indeed, all 69 passengers and crew onboard the Bashkirian Airlines flight, as well as the two crew members on the DHL flight died. This tragic incident had profound mental health impacts on the victims' families and involved significant legal proceedings regarding passenger death and injury claims.

Most importantly, this case holds particular significance when addressing the topic of family assistance and mental health as inextricably linked topics and impossible to separate. The collision had a significant emotional and psychological impact on the families of the deceased. The sudden and violent nature of the incident, along with the loss of many children, exacerbated the grief and trauma experienced by the victims' families. Immediate and long-term mental health support would have been crucial in addressing the needs of those affected.<sup>131</sup> On top of that, many families would have required longer-term and ongoing mental health support and care to address persistent issues such as post-traumatic stress disorder (PTSD), depression, and prolonged grief disorder. The legal proceeding following the Überlingen collision focused on determining liability, compensating the victims' families, and addressing the systemic failures that led to the accident.<sup>132</sup> For the purposes of this work, the focus will remain the compensation for victims' families, to ensure the full visibility of the issue. Both airlines were involved in compensating the victims' families and the process was guided by international air law principles, primarily under the 1999

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<sup>128</sup> Bennett Simon, *supra* note XX at 31.

<sup>129</sup> Bashkirian Airlines Flight 2937 (Tupolev Tu-154).

<sup>130</sup> DHL Flight 611 (Boeing 757).

<sup>131</sup> Harding, Luke, Paton Walsh, Nick "Nothing left to lose: grief-crazed murder suspect haunted by family's air deaths" (2004) *The Guardian*, London.

<sup>132</sup> For the liability determination, a thorough investigation was conducted, revealing several factors that contributed to the collision. Some of those included air traffic controls failures and technical and human error. As for the first, Skyguide, the Swiss air traffic control company responsible for managing the airspace where the collision occurred, was found to have significant operational shortcomings. The lone air traffic controller on duty failed to properly manage the conflicting flight paths, and critical safety systems were offline for maintenance. Second, the investigation also highlighted a series of technical and human errors that compounded the situation, including issues with the Traffic Collision Avoidance System (TCAS) and the response of the air traffic controller. For instance <[faa.gov/documentLibrary/media/Advisory\\_Circular/TCAS%20II%20V7.1%20Intro%20booklet.pdf](http://faa.gov/documentLibrary/media/Advisory_Circular/TCAS%20II%20V7.1%20Intro%20booklet.pdf)> In 2007, a Swiss court found several Skyguide employees guilty of negligent homicide. Four employees received suspended prison sentences. These verdicts underscored the legal accountability of individuals and organizations in ensuring air traffic safety. For instance <[nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/](http://nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/)>.

Montreal Convention, which provided a framework for determining compensation amounts. As the air traffic controller, Skyguide's operational failures were a significant factor in the accident, the company was held liable as well. In 2004, Skyguide was able to reach a settlement with the victims' families, agreeing to pay compensation to cover both pecuniary and non-pecuniary damages.<sup>133</sup>

The significance of this case, however, is not to be found in what was done correctly, rather in those areas that have been pushed aside. Mental suffering, loss and grief are emotional states of such magnitude that are impossible to compensate. Too often, that is forgotten. And this is perfectly shown in the Vitali Kaloyev Case<sup>134</sup>. Vitaly Kaloyev was primarily involved in the case, having lost his wife and children in the air crash, and decided to confront and kill the air traffic controller Peter Nielsen, in 2004. Kaloyev was convicted of murder in Switzerland and was later released on parole in 2007. This case perfectly highlights the profound emotional and psychological toll that loss has on victims' families, regardless of any compensation. On a positive note, it is to be recognized that, in the aftermath of the collision, several systemic reforms were implemented to improve air traffic safety and prevent similar incidents, such as enhanced air traffic control procedures<sup>135</sup> and technological improvements<sup>136</sup>.

In summary, the Überlingen mid-air collision had far-reaching impacts on the mental health of the victims' families and led to significant legal and systemic changes. The legal proceedings addressed liability and compensation, highlighting the responsibilities of airlines and air traffic control organizations under international air law. The incident also underscored the need for comprehensive mental health support for those affected by aviation disasters, demonstrating the critical importance of providing both immediate and long-term care to help families cope with their profound loss.<sup>137</sup>

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<sup>133</sup> "Court upholds Skyguide compensation: Skyguide did offer appropriate compensation to the families of the 71 victims of the 2002 air collision over Überlingen in Germany, the Swiss Federal Court has ruled." (2011) [swissinfo.ch](http://swissinfo.ch/eng/life-aging/court-upholds-skyguide-compensation/30259716), available at <[swissinfo.ch/eng/life-aging/court-upholds-skyguide-compensation/30259716](http://swissinfo.ch/eng/life-aging/court-upholds-skyguide-compensation/30259716)>.

<sup>134</sup> Bott, Martin; Paterson, Tony "Father of air-crash victims guilty of revenge killing" (2005) *The Independent*, Independent Digital News & Media.

<sup>135</sup> Skyguide and other air traffic control organizations adopted more stringent safety protocols and operational procedures. (<[nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/](http://nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/)>).

<sup>136</sup> Improvements were made to the TCAS and other safety systems to enhance their reliability and effectiveness in preventing mid-air collisions. (*idem*)

<sup>137</sup> More on how the industry can move forward in Chapter 3.

### 3. Liability and insurance considerations for mental health support.

Recognizing that aviation was an inherently international affair, the world community sought to bring simplicity and uniformity to the predominant procedural and substantive law issues. This was done by promulgating a single set of rules to govern air carrier liability to be applied universally in transport between contracting States.<sup>138</sup> As already mentioned, liability is a topic that has been extensively discussed in the two international air law instruments: the 1929 Warsaw Convention and the 1999 Montréal Convention. Key aspects of air law liability center around carriers' liability<sup>139</sup>, other parties' liability<sup>140</sup>, jurisdiction and law applicable<sup>141</sup>, and insurance. Air carriers are generally required to carry insurance to cover their liability in case of accidents. The level of required insurance varies depending on the jurisdiction and the type of operation. Aircraft accidents are often dramatic and catastrophic events, sometimes involving the death or injury of hundreds of passengers and crew and the destruction of tens, sometimes hundreds, of millions of dollars of property. Because so many lives may be lost in a single event, airline accidents generate widespread media and public attention, making headlines on the front pages of newspapers, web sites and broadcast media, and sometimes spurring hundreds of lawsuits. The crash of a large commercial aircraft also can impose major financial burdens upon insurers, air carriers and manufacturers.<sup>142</sup> The "cause" of an aviation catastrophe consists of the "actions, omissions, events, conditions, or a combination thereof which led to the accident or incident."<sup>143</sup>

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<sup>138</sup> Paul Stephan Dempsey, "Aviation Liability Law" (Eds.) Chapter 1.

<sup>139</sup> This includes (i) Passenger Injury or Death: Airlines are generally liable for damage sustained in the event of a passenger's injury or death occurring onboard an aircraft or during boarding and disembarking. Under the Montreal Convention, airlines are strictly liable for up to a certain amount of damages and may be liable for more if negligence is proven; (ii) Baggage and Cargo: Airlines also have liability for loss, damage, or delay of baggage and cargo. Limits on liability exist, but passengers can declare a higher value and pay an additional fee for greater coverage; and (iii) Delay: The Montreal Convention also covers compensation for passengers in cases of delay, though the amounts are usually capped. For more see Pablo Mendes de Leon, Werner Eyskens, "The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System" (2001) 66:3 J Air L & Com 1155.

<sup>140</sup> Such as aircraft manufacturers if an accident is caused by a defect in the design or manufacture of the aircraft or its components and Air Traffic Controllers and Airports. Negligence on the part of air traffic controllers or airport operators can also lead to liability in cases where such negligence contributes to an accident. (i.e. Überlingen) Absent sovereign immunity, airports, too, can be legitimate targets of litigation for their negligence. *Res ipsa loquitur* was successfully alleged in *Colmenares Vivas v. Sun Alliance Insurance Company* (807 F.2d 1102 (1st Cir. 1986).

<sup>141</sup> Determining which court has jurisdiction and which country's law applies can be complex in cases of international air travel – e.g. FNC. As mentioned *supra* Chapter 1, para 6, the Montreal Convention provides some guidelines, but national laws also play a significant role.

<sup>142</sup> Paul Stephen Dempsey and published in volume 74 of the Journal of Air Law & Commerce

<sup>143</sup> Chicago Convention Annex 13: Aircraft Accident and Incident Investigation, Ch. 1: Definitions, "Causes". Annex 13 addresses two broad categories of events — "accidents" and "incidents" — and one subcategory, "serious

As P.S. DEMPSEY remarked<sup>144</sup> “mass disaster litigation for which aviation accidents are a catalyst sometimes present highly complex fact scenarios” for the related, yet independent, issues of identification of competent jurisdiction and applicable law.<sup>145</sup> For example,

“should there ever be the unfortunate instance of a crash of an A-380 aircraft with between 500 and 800 passengers on board (depending on cabin configuration), there will almost certainly be dozens of nationalities of injured or deceased passengers; they will have purchased their tickets either through agents or online at home or overseas; the airline has its own nationality, State of incorporation and principal place of business; the aircraft may be leased from another airline or from an off-shore leasing corporation, and it may have been registered in yet another State; the flight may have been code shared with half a dozen other airlines; the airline may be operating under the banner of a global alliance headquartered in another country; the flight may have been over the high seas or any *en route* country, and potentially even one which would not have been anticipated when flight paths are changed due to inclement weather; air traffic controllers may be located in yet another State; and the aircraft will have been assembled in France, but with component parts fabricated across Europe (typically Spain, Germany and the U.K.), and an engine produced elsewhere.”<sup>146</sup>

### 3.1 Types of airline insurance.

On those grounds, airlines are required to have and need various types of insurance to cover the financial risks associated with aviation accidents. Usually, insurance policies are designed to address different aspects of potential liability and damage resulting from air crashes.<sup>147</sup> The overview below wants to exemplify and clarify the types of insurance required, the amounts typically covered, and the parameters used to calculate premiums<sup>148</sup>. Generally, there are four types of insurance: hull insurance, liability insurance, cargo insurance and war risk insurance.<sup>149</sup> Hull insurance covers damage to the aircraft itself. This can include repairs or replacement of the

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incidents”. See Francis Shubert, “Legal Barriers to a Safety Culture in Aviation” (2004) XXIX Annals of Air & Space L. 19 at 25. Shubert also writes (at 29) that States are encouraged to extend the scope of safety investigations to serious incidents and accidents.

<sup>144</sup> Paul Stephan Dempsey, *supra* note 138, Chapter 1, Section 3 at 2.

<sup>145</sup> Andreas F. Lowenfeld, “Mass Torts and the Conflict of Laws: The Airline Disaster” (1989) U. Ill L. Rev. 157 at 157. The complexity of mass airline disasters is such that a prominent author has proposed the argument of choice of law specific to aircraft accidents, dealing separately with defendants and plaintiffs. See Willis L.M. Reese, “The Law Covering Airplane Accidents” (1982) 39 Wash & Lee L. Rev. 1303.

<sup>146</sup> Paul S. Dempsey, *supra* note 138.

<sup>147</sup> See Harold Caplan, “The Aviation Insurance Clauses Group: A Model for Other Markets?” (2006) 31:4/5 Air & Space L. 254.

<sup>148</sup> Duin, Darin D., “Premium Finance, What Is It, Who Is It for and Where Is My Risk?” (2021) 81:5 Iowa L at 22-4.

<sup>149</sup> See Rod D. Margo, “Aspects of Insurance in Aviation Finance” (1996) 62:2 J Air L & Com at 423.

aircraft following an accident.<sup>150</sup> The coverage amount is typically based on the value of the aircraft, which can range from several million to hundreds of millions of dollars, depending on the type and age of the aircraft. Premiums of this kind are calculated based on factors such as the aircraft's value, its age, its operational history, and the airline's safety record.<sup>151</sup>

Liability insurance can be divided in passengers' liability insurance and third-party liability insurance. For the first, this type of insurance covers claims for bodily injury or death of passengers and it is mandatory under the Montreal Convention 1999 and the Warsaw Convention 1929. Under the Montreal Convention, airlines must have coverage of at least 113,100 Special Drawing Rights (SDRs) per passenger, which is approximately \$138,000 USD. Higher amounts are often required by national regulations or contractual agreements. As for premiums, those are based on factors such as the number of passengers, the airline's safety record, the routes flown, and historical claims data.<sup>152</sup>

Third party-liability insurance covers damage to third-party property (e.g., damage caused to property on the ground) and injury or death of third parties not on board the aircraft. Coverage amounts are often set by national regulations and can vary significantly. For example, EU regulations require minimum coverage limits of 1 billion euros for third-party liability per accident.<sup>153</sup> In this case, premiums are determined based on factors such as the aircraft type, flight routes, the airline's operational history, and the geographic areas served.<sup>154</sup>

Cargo insurance covers loss or damage of goods and the cargo transported by the aircraft.<sup>155</sup> Coverage amounts are based on the value of the cargo. Per the 1999 Montreal Convention, Article 22, it is well understood that "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

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<sup>150</sup> *Idem*.

<sup>151</sup> Justyn Harding, Matthew Maddocks Gaynore Moss and Andrew Pryde, "Aviation Insurance", Institute and faculty of Actuaries available online <actuaries.org.uk/system/files/documents/pdf/harding.pdf>.

<sup>152</sup> Rod D. Margo, *supra* note 149 at 437-45.

<sup>153</sup> European Union, *Commission Delegated Regulation (EU) 2020/1118 of 27 April 2020 amending Regulation (EC) No 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators*, OJEU, L 243/1. "For instance for liability in respect of third parties, the minimum insurance cover per accident and per aircraft depends on the maximum take-off weight (MTOM) of the aircraft. This considers that the potential damage on the ground increases with the weight of the aircraft. For aircraft with less than 500 kg MTOM, the minimum insurance cover is 750,000 SDR. For aircraft with 12-25 tons MTOM (e.g. regional jets), the minimum insurance cover is 80 million SDR. For aircraft with 200-500 tons MTOM (e.g. long-haul jets), the minimum insurance cover is 500 million SDR."

<sup>154</sup> Rod D. Margo, *supra* note 149 at 439-45.

<sup>155</sup> Clarke, M., & Leloudas, G. (2016), *Air Cargo Insurance* (1st ed.). Informa Law from Routledge at 25.

when the package was handed over to the carrier, a special declaration of interest in delivery [...]”. Airlines may require specific coverage limits depending on the types of goods transported. Premiums are based on factors such as the types of cargo, routes, and the value of goods being transported.<sup>156</sup>

Lastly, war risk insurance covers losses due to war, terrorism, and related risks that are typically excluded from standard policies. Coverage amounts vary based on the risks associated with specific regions and the airline’s operations and premiums are influenced by the geopolitical risk of the regions served, the airline’s exposure to such risks, and the type of coverage required.<sup>157</sup>

### 3.2 Parameters for Calculating Premiums in aircraft insurance

There are several parameters to consider when calculating premiums which are:

- Aircraft Type and Value:<sup>158</sup> the type, model, and value of the aircraft significantly impact the premiums. More valuable and complex aircraft generally attract higher premiums;<sup>159</sup>
- Operational History: the airline’s safety record, including past accident history, plays a crucial role in determining premiums. Airlines with a better safety record typically benefit from lower premiums.<sup>160</sup>
- Routes and Destinations: the geographic regions served by the airline can affect premiums. Routes over high-risk areas (e.g., conflict zones) may result in higher premiums;<sup>161</sup>
- Maintenance and Safety Practices: the airline’s maintenance procedures and overall safety practices are assessed to determine risk levels. Well-maintained aircraft and rigorous safety protocols can lead to lower premiums;<sup>162</sup>

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<sup>156</sup> *Ibid.*, at Chapter 2.

<sup>157</sup> See *Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311, 316 (1928) "Insurance policies are traditionally contracts *uber rimae fidei* [done in utmost good faith] and a failure by the insured to disclose conditions affecting the risk, of which he is aware, makes the contract voidable at the insurer's option."

<sup>158</sup> Rod D. Margo, *supra* note 149 at 395.

<sup>159</sup> Clarke, M., & Leloudas, G. (2016), *supra* note 155 at 25.

<sup>160</sup> Detailed discussion on these elements is outside the scope of this work. For references see Stephen Holloway, *Aircraft Acquisition Finance* (1992); see also Michael D. Rice, "Current Issues in Aircraft Finance" (1991) 56J. AIR L. & CoM. at 1027; Rod D. Margo, "Aircraft Leasing: The Airline's Objectives" (1996) 21 AIR & SPACE L. at 166.

<sup>161</sup> Rod D. Margo, *supra* note 149 at 439.

<sup>162</sup> Detailed discussion on these elements is outside the scope of this work. For references see *Aircraft Financing* (Simon Hall ed., 2d ed. 1993).

- Claims History: an airline's history of insurance claims affects premiums. Frequent claims can result in higher premiums due to increased risk;<sup>163</sup>
- And Regulatory Requirements: national and international regulations establish minimum insurance coverage requirements, which insurers must adhere to. Compliance with these regulations is critical in determining coverage and premiums.<sup>164</sup>

In summary, airlines need a comprehensive range of insurance policies to cover the various risks associated with aviation operations and insurance providers use the above parameters to assess risk and set premiums, ensuring that airlines are adequately protected against potential financial losses resulting from air crashes.

### **3.2.1 Compensation and Liability in the Überlingen Mid-Air Collision**

An interesting example of how compensation and liability combine, and the issues arising from it, can be seen in the Überlingen mid-air collision case. The accident involved multiple parties, including Bashkirian Airlines, DHL, and Skyguide.<sup>165</sup> An examination of the compensation mechanisms and the legal and financial responsibilities assigned to each entity is important, as it is functional to understanding the complexities of these mechanisms. Both airlines, Baskirian and DHL, had to address the liability for the deaths of passengers and crew members onboard their respective flights. The compensation was guided primarily by the Montreal Convention of 1999, which provided the legal framework for determining airline liability in the event of international aviation accidents. Under the International Convention, Bashkirian Airlines was liable for the deaths of its passengers. Per its structure, the Convention imposes a two-tier system of liability<sup>166</sup>: the first tier entails strict liability up to 113,100 Special Drawing Rights (SDRs), approximately \$138,000 USD, without the need to prove fault. Th second tier foresees unlimited liability, if the airline cannot prove that it took all necessary measures to avoid the damage or if the damage was solely due to the negligence of a third party. Bashkirian Airlines provided compensation to the

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<sup>163</sup> Clarke, M., & Leloudas, G. (2016), *supra* note 155 Chapter 5.

<sup>164</sup> Rod D. Margo, *supra* note 149 at 425.

<sup>165</sup> See *supra* para 2.

<sup>166</sup> For more see Bin Cheng, "A New Era in the Law of International Carriage by Air: From Warsaw (1929) to Montreal (1999)" (2004) 53:4 Int'l & Comp L. Q 833.

victims' families as per the Convention's guidelines. This included payments for both pecuniary and non-pecuniary damages.<sup>167</sup> As for the other carrier, DHL, it was responsible for the deaths of its two crew members. Under the 1999 Montreal Convention, similar liability principles applied, including strict liability up to 113,100 SDRs and potential for higher liability based on fault.<sup>168</sup> Further, the Überlingen accident saw involvement of a third party. Skyguide, the Swiss Air Traffic Control company, played a critical role in the accident due to its operational failures. As discussed above, the legal proceedings and settlements involving Skyguide were more complex and involved multiple facets of liability and compensation.<sup>169</sup>

The investigation<sup>170</sup> revealed significant shortcomings in Skyguide's operations on the night of the accident, including a single air traffic controller on duty, malfunctioning radar systems, and inadequate communication protocols.<sup>171</sup> Several Skyguide employees were found guilty of 'negligent homicide'. Four employees received suspended prison sentences, highlighting the criminal accountability of individuals in ensuring air traffic safety. Nevertheless, in 2004, Skyguide was able to reach a settlement agreement with the victims' families, covering both pecuniary and non-pecuniary damages.<sup>172</sup> The compensation framework for the Überlingen mid-air collision was influenced by several key factors: international air law, multilateral negotiations and a series of systemic reforms. Of course, the 1999 Montreal Convention provided the primary legal basis for determining the liability of both air carriers.<sup>173</sup> The compensation settlements that were reached involved negotiations between the airlines, Skyguide, insurance companies and the victims' families. These negotiations aimed to ensure fair and adequate compensation for the losses suffered and prompted significant systemic reforms in air traffic control operations.<sup>174</sup> Skyguide and other air traffic controllers adopted more stringent safety protocols and enhanced operational procedures to prevent similar incidents in the future.<sup>175</sup> The criminal convictions and

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<sup>167</sup> As discussed above, the pecuniary damages covered economic losses, such as loss of income and funeral expenses, while non-pecuniary damages addressed the emotional distress and loss of companionship.

<sup>168</sup> DHL provided compensation to the families of the deceased crew members. This included financial support for their dependents and payments for funeral expenses and other related costs.

<sup>169</sup> See *supra* Chapter 2, para 2.

<sup>170</sup> According to ICAO Annex 13 on Accident Investigation – maybe add details on the investigation itself.

<sup>171</sup> Schebesta, Hanna. 'Risk Regulation Through Liability Allocation: Transnational Product Liability and the Role of Certification'. *Air & Space Law* 42, no. 2 (2017): 107–136.

<sup>172</sup> *Supra* note XX <[nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/](http://nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/)>.

<sup>173</sup> Schebesta, Hanna *supra* note 171 at 29.

<sup>174</sup> Peter Brooker (2008) "The Überlingen accident: Macro-level safety lessons", 46:10 *Safety Science* at 1483-1508.

<sup>175</sup> *Idem*.



compensation settlements underscored the accountability of both individuals and organizations. While not perfect, the inclusion of non-pecuniary damages in the compensation settlements highlighted the recognition of emotional and psychological impacts on the victims' families. And, while setting a precedent for addressing mental health considerations in aviation accident claims, this is still a very unexplored field that needs more attention. The coordination between airlines, air traffic control authorities, and insurance companies demonstrated the importance of a collaborative approach in resolving liability and compensation issues in complex aviation accidents.

#### **4. The role of insurance companies in international air travel**

Insurance companies play a critical role in the management and compensation processes following air crashes. Their involvement spans various aspects of risk management, liability coverage, and compensation for victims and their families. Starting with risk management.<sup>176</sup> It is the role of insurance companies to assess the risks associated with any operating aircraft and provide coverage to airlines, manufacturers, and other stakeholders. This process involves the evaluation of key elements such as the aircraft type, maintenance records, flight routes, and operational safety measures.<sup>177</sup> Airlines pay premiums to insurance companies based on the level of coverage required and the assessed risk. These premiums contribute to the insurance pool used to compensate for potential losses from accidents.

Liability coverage is another element considered in insurance.<sup>178</sup> Aircraft liability insurance covers liability for damages resulting from aircraft accidents. It typically includes coverage for bodily injury and property damage caused to third parties, including passengers, cargo, and third-party property. Together with that, under the 1999 Montreal Convention, airlines are required to carry insurance to cover liability to cover passengers' death or injuries.<sup>179</sup> Such amounts need to be adequate to ensure that compensation is available for the families of deceased or injured passengers.

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<sup>176</sup> Vitaly S. Guzhva, Sunder Raghavan, Damon J. D'Agostino, (Elsevier, 2024 Second Ed.) "Aircraft Leasing and Financing" Chapter 5 at 123-154.

<sup>177</sup> For more *ibid.* Chapter 4 at 85-122.

<sup>178</sup> Rod D. Margo, *supra* note 149 at 437-45.

<sup>179</sup> For instance Air France Flight 447 (2009), Malaysia Airlines Flight MH370 (2014) and Germanwings Flight 9525 (2015)

Compensatory payments also fall in the scope of work of insurance companies. Indeed, immediate payments, also known as ‘advanced payments’<sup>180</sup>, are made by insurance companies to victims’ families to cover immediate need, such as those discussed above (funeral expenses, and such immediate needs), to grant a temporary financial support. Those payments are made to alleviate the financial burdens while investigations and formal claims are taking place. Once the liability is established, insurance companies will work to settle claims. This involves determining the appropriate compensation amounts based on the different legal frameworks (e.g. 1999 Montreal Convention) and the specific details of the accident. For those reasons, investigations are essential for insurance companies, and they may present legal defenses. They may provide legal defense services to their insured parties (e.g. airlines) if legal actions are taken against them. This includes covering legal fees and representing the insured in court or arbitration proceedings. This is why insurance companies often collaborate with aviation safety authorities and investigators to understand the causes of the accidents and assess liability.<sup>181</sup> They may also conduct their own investigations to gather evidence and support the claims process.<sup>182</sup>

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<sup>180</sup> 1999 Montreal Convention, art 28.

<sup>181</sup> ICAO Annex 13 – Accident Investigation.

<sup>182</sup> For more see Kym Bills, Leesa Costello, Marcus Cattani “Major aviation accident investigation methodologies used by ITSA members” (2023) 168 Safety Science at 106315.

## Chapter 3

### Introducing the *I-CARe* Program:

### International Civil Aviation Relief Program

#### 1. New directions on the term ‘accident’ and compensation for non-pecuniary damages.

So far, the analysis brought forward seems quite cohesive, with the two main international instruments that govern ‘certain aspects’ of air travel.<sup>183</sup> However, national and regional practices have fostered an environment that created more and more differences. Two main examples will be introduced: the European Union and the United States of America. Far from being the only realities affected by the phenomenon, those represent ideal examples for the understanding of why mental health and mental injury should start being considered in a much broader sense than precedent and monetary compensation.

Starting from the EU. When it comes to disregarding external precedents, the EU has been on the forefront of new interpretations and quite vivid discussions. Lately, the Court of Justice of the European Union (CJEU) has taken an approach that disregards the work and the interpretation of the 1999 Montreal Convention and the term ‘accident’. Particularly, in the *GN v ZU* case of December 19, 2019<sup>184</sup> the Court analyzed the ordinary meaning of the term ‘accident’ as well as

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<sup>183</sup> The contents of this paragraph have been greatly inspired by the teachings and insights of Public Air Law Professor Vincent Correia, Co-Director, Institute of Air and Space Law at McGill University, Montréal, Canada. © Vincent Correia 2024.

<sup>184</sup> CJEU, *GN v ZU*, Case C-532/18, [2019] ECLI:EU:C:2019:1127.

the *travaux préparatoires*<sup>185</sup>, and excluded the argument that only aviation-related accidents could be compensated.<sup>186</sup> In doing so, the Court adopted a broad definition of the concept of ‘accident’, which had been understood, introducing an ‘unforeseen harmful and involuntary event’<sup>187</sup>. This definition clearly distances itself from the *Air France v. Saks* definition, regarding the ‘externality’ criterion. What’s more, the Court made absolutely no reference to the preexisting rulings. Although not unexpected, in the circumstance of general, international consensus around the definition of ‘accident’, it is still incredibly surprising that the CJEU decided to ‘fly solo’. Particularly in the sense of coherence of judicial interpretation. Although some might have expected the definition to be reconsidered and further comments be made<sup>188</sup>, this never happened. In fact, the CJEU later confirmed its definition and approach in the 2022 case *JR v. Australian Airlines AG*.<sup>189</sup> AG EMILIOU noted in his opinion that “the only substantive difference between these two definitions lies in the “externality” criterion, introduced in the first but seemingly absent from the second”, and <sup>190</sup> “required the injury to be caused by an event that satisfies the *Saks* definition,”<sup>191</sup> the CJEU simply did not do so.<sup>192</sup> The Court argues that the occurrence of an accident triggers the 1999 Montreal Convention, Article 20, under the carriers’ liability as well as the possibility to be exonerated in the occurrence that the passenger caused or contributed to the damage.<sup>193</sup> So, by distancing itself from the *Saks* definition, the CJEU effectively extended the scope of application of the Convention, while not necessarily increasing the liability of the carriers. It would be interesting to see how and if this new approach would ever be implemented in the circumstance of an air crash accident and the impact it would have on victims’ families and their assistance. Another significant case that demonstrates the CJEU’s tendency to distance itself from already-existing interpretations can be found in the *Laudamotion* ruling of October 20, 2022<sup>194</sup> in which the Court interpreted the term ‘bodily injury’ in complete opposition to the traditional approach.

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<sup>185</sup> *Ibid.*, at 37.

<sup>186</sup> *Ibid.* at 43.

<sup>187</sup> *Ibid.* at 35.

<sup>188</sup> Vincent Correia, “Cour de justice, 4e ch., 19 décembre 2019, Niki Luftfahrt”, in Fabrice Picod (ed.), *Jurisprudence de la CJUE 2019* (Brussels: Bruylant, 2020) at 1088.

<sup>189</sup> CJEU, *JR v Austrian Airlines AG*, Case C-589/20, [2022] ECLI:EU:C:2022:424, para 20 [*JR v Austrian Airlines AG*].

<sup>190</sup> Opinion of AG Emiliou delivered on January 20, 2022 on the Case C-589/20, ECLI:EU:C:2022:47 para 35.

<sup>191</sup> Robert Lawson, “Unusual but Perhaps not Unexpected: The Lonely Furrow Ploughed by the CJEU in Respect of an Article 17 ‘Accident’” (2023) 48:1 Air & Space L. 1 at 10.

<sup>192</sup> *JR v Austrian Airlines AG*, *supra* note 189, para 20.

<sup>193</sup> *Ibid* para 28.

<sup>194</sup> CJEU, *BT v Laudamotion GmbH*, Case C-111/21, [2022] ECLI:EU:C:2022:808 [*BT v Laudamotion GmbH*].

According to Article 17 of the 1999 Montreal Convention “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 disembarking.”<sup>195</sup> This definition is *prima facie* completely unambiguous. Following the US Supreme Court interpretation in *Floyd*<sup>196</sup>, the word ‘bodily injury’ excludes the compensation for pure psychological damage.<sup>197</sup> Moral and psychological damages could be recovered only if the consequence of a physical injury or if they have a physical manifestation.<sup>198</sup> In the present case, In *Laudamotion*, following an emergency evacuation, the passenger was “hurled several meters through the air by the jet blast from the right engine which had not yet been shut down.”<sup>199</sup> While it is easily understandable that this was an unfortunate event, the claimant did not allege bodily injury, only post-traumatic stress disorder. Considering the wording of article 17 of the Montreal Convention and the *travaux préparatoires*, mental injuries must relate to bodily injury<sup>200</sup> and one would have expected the CJEU to follow suit. However, the Court ruled that:

‘the fact that the concept of ‘bodily injury’ was used in the wording of Article 17(1) of the Montreal Convention does not necessarily presuppose that the authors of that convention intended to exclude, in the event of an ‘accident’ within the meaning of that provision, the liability of air carriers where that accident has caused psychological injury to a passenger which is not linked to any bodily injury having the same cause.’<sup>201</sup>

Therefore, not only did the Court emphasize on the objective of the Convention to ensure the protection of the interests of the passengers,<sup>202</sup> but it also greatly focused on the principle of equal treatment to rule that passengers suffering from psychological injuries can be in a comparable

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<sup>195</sup> 1999 Montreal Convention, *supra* note 6

<sup>196</sup> *Floyd*, *supra* note 48.

<sup>197</sup> See *King v Bristow*; *Morris v KLM Royal Dutch Airlines*, [2002] UKHL 7; *Stott v Thomas Cook Tour Operators Ltd.*, [2014] UKSC 15; *Plourde v Service Aérien FBO Inc (SkyService)*, 2007 QCCA 739; *Thibodeau c. Air Canada*, [2014] 3 RCS 340; *Grueff v Virgin Australia Airlines Pty Ltd*, [2021] FCA 501; See, however, in Israel, *Daddon v Air France* (1984) 1 S & B Av R V11/141; in Spain, Audiencia Provincial Madrid, February 1, 2008, [2008] ECLI:ES:APM:2008:10106.

<sup>198</sup> See *Weaver v Delta Airlines*, 56 F Supp 2d 1190 (1999); *In re Air Crash at Little Rock, Arkansas*, 118 F Supp 21d 916 (2000); *King v Bristow*; *Pel-Air Aviation Pty Ltd v Casey* [2015] NSWSC 566.

<sup>199</sup> *BT v Laudamotion GmbH*, *supra* note 194, para 9.

<sup>200</sup> ICAO, “International Conference on Air Law (Convention for the Unification of Certain Rules for International Carriage by Air) Montreal, 10 - 28 May 1999”, vol. I, Doc 9775-DC/2 at 67-76.

<sup>201</sup> *BT v Laudamotion GmbH*, *supra* 194, para 25.

<sup>202</sup> *BT v Laudamotion GmbH*, *supra* note 194, para 27.

situation of that of passengers affected by a bodily injury.<sup>203</sup> This approach that failed to convince in the past is heavily criticized:

‘While it is laudable to ensure equal treatment, the Court undermined the balance agreed by the international legislator, the principle of legal certainty, and the uniformity of the Convention. In this sense, it went against the objective and purpose of the Convention. The Court probably lost sight of the fact that the Convention was the result of a transaction made by States between the demands of each Party’.<sup>204</sup>

While new approaches towards the protection of mental health is incredibly needed, it is apparent that shifts in interpretation and scope are problematic. This current status of increased fragmentation causes several problems that are well-known to lawyers, starting with *forum shopping* in actions for liability.<sup>205</sup> In the evolving environment that is air flight and accidents, one must question whether it is time for a new and more practical approach.

But if the EU is championing the category of fragmented definitions, the US is the one country leading ‘mega’ liability claims. As insurance plays a crucial role in international air law, particularly in the context of liability arising from air transport operations, it is easy to understand the severe implications that ‘mega’ law suits could create long-term on the longevity of air travel and airline operations. To briefly summarize, the primary objective of such insurance is to cover risks associated with the operation of aircraft, including passenger injuries, damage to cargo, and third-party liabilities.<sup>206</sup> The legal framework for air law liability and insurance is governed by various international conventions, most notably the Montreal Convention of 1999. Carriers are required to maintain adequate insurance to cover liabilities. Further, it sets limits on the amount of compensation that can be claimed by passengers or their families in the event of injury or death. As introduced above, one of the major challenges in the realm of international air law insurance is the variability of legal standards across different jurisdictions. For example, while the 1999 Montreal Convention sets certain limits on liability, the interpretation and implementation of these

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<sup>203</sup> *Ibid.*, para 28.

<sup>204</sup> See Cyril-Igor Grigorieff, “Case Laudamotion: The CJEU Rules that Severe Mental Injury Equals Bodily Injury Under the 1999 Montreal Convention” (2023) 48:1 Air & Space L. 1.

<sup>205</sup> See Santiago Areal Ludeña & Jorge Alberto Fierro Abella, “La responsabilidad internacional del transportista aéreo en caso de muerte o lesión de pasajeros: ‘forum shopping’ y futuro del Convenio de Montreal de 1999. Análisis jurídico y económico” (2009) 57:1 Estudios de Deusto 11; Caroline Derache, “Forum Shopping in Air Law: Analysis of the Situation in France from a Defence Lawyer’s Perspective” (2020) 45:6 Air & Space L. 611

<sup>206</sup> Rod D. Margo, *supra* note 149 at 433.

limits can vary significantly from one country to another. Another challenge is the assessment of non-economic damages, such as pain and suffering or loss of companionship, which can be difficult to quantify and may lead to significant variations in compensation awards. Therefore, one of the main and most difficult issues one can run into is determining the appropriate jurisdiction for litigation in cases of international air accidents. Under the 1929 Warsaw and 1999 Montreal Convention, five jurisdictions are recognized: (i) the domicile of the carrier, (ii) the principal place of business, (iii) the place where the contract was made, (iv) and the destination<sup>207</sup> and (v) the so-called ‘fifth jurisdiction,’ at the option of the plaintiff, as the domicile or permanent place of residence of the passenger.<sup>208</sup> This is particularly important as this set up often leads to forum shopping. This has happened particularly In the US. Passengers or victims and their families feel attracted to US forums as compensations for liability have skyrocketed.

### **1.1 The US Example – Damages in a Passenger Death Case**

Because passengers’ and their families psychological care, pain and suffering has historically been excluded from the interpretation of Art. 17 of the 1999 Montreal Convention, national jurisdictions had the possibility of leveraging that dismissal to seek greater awards in national jurisdictions that are ready to ‘pay out’. This detail is important as international treaties, such as the 1999 Montreal Convention, offer international standards that bind those States which ratify the instrument. Accordingly, the definition of ‘accident’ provided therein - under article 17 MC, specifies that awards can be issued only for physical injury and death. This means that the limits on liability foreseen in the instrument, which is ‘exclusively’ applicable by virtue of article 29 MC, cannot apply to psychological pain and suffering. The Convention outlines specific limits of liability for death and physical injury, and only under this framework can claims be made and certain limits apply. For example, airlines should not be held liable beyond the compensation limits set out in the Montreal Convention for certain types of claims – i.e. pax breaks their ankle while disembarking an aircraft because the stairs used to disembark were icy, multiple warnings were given by the crew but pax kept his headphones on and did not listen. This is an easy case of

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<sup>207</sup> 1929 Warsaw Convention, *supra* note 5, Art 28

<sup>208</sup> 1999 Montreal Convention, *supra* note 6, Art 33

contributory negligence that involves physical injury, hence a monetary compensation under article 17 of the 1999 Montreal Convention would be issued but limits would apply.

However, these types of limits do not hold true for passengers and their families when they experience psychological pain and suffering. Since those aspects are not considered in any interpretation of the 1999 Montreal Convention, new damages have been considered by national jurisdictions such as: loss of income, loss of services, loss of care and comfort, grief and anguish, and so on.

This is where airlines and insurance companies need to come together and change the *status quo*. The aviation industry needs a new standard of care: one that compensates for psychological pain and suffering, grief and loss, while preserving its vitality and longevity. If such care is implemented, the industry could ensure more legal certainty, awards' foreseeability and new limits on compensation could be introduced. Limits that consider the physical injury, but that give access to psychological support to those involved when those accidents happen. If a system like this is implemented, it would be possible to rightfully compensate a physical and psychological injury while, at the same time, establish a clear cap on airline liability. This would allow insurance companies to establish fair premiums and grant solvability to airlines. On the passengers and family side, it would grant them an award based on injury and death – under article 17 MC, as well as a complimentary program of psychological support that could concretely help them through aspects such as: loss of income, loss of services, loss of care and comfort, grief and anguish, and so on. The psychological injury would not be 'paid out', rather it would be included in a specifically designed psychological program that would help those who are suffering navigate their losses. The access to this program would be offered as a voluntary package to *opt-in* to, together with the award. The claimant/family member would have the possibility to *opt-in* to the program. By doing so, they would receive a monetary award aligned with the 1999 Montreal Convention, when applicable, *and* psychological care. If the claimant/family member *opts-out* of the psychological program, only awards under article 17 of the MC would be compensated. For the industry, this would mean that resources that are now scattered away on incredibly high awards could be reinvested and re-allocated into an international program that would seek international cooperation and implement social responsibility in the aviation industry.



The clearest examples of how awards can skyrocket in the event of passengers' injury and death is clearly found in the US jurisdiction as it considers key aspects such as shown below. Aspects that today are not addressed by international law or international standards. Let's assume 40-year-old passenger earning \$100,000 per year who is survived by a spouse and two children (8 yrs. and 12 yrs.)<sup>209</sup>

Loss of Income	30 yrs. x \$100,000	\$ 3,000,000
Loss of Services	35 yrs. x \$10,000	\$350,000
Loss of Inheritance		\$ 250,000
Funeral/Burial expenses		\$ 20,000
Grief/Anguish	Spouse and 2 Children	\$ 1,500,000
Loss of Guidance/Care	Children - \$250,000 each	\$ 500,000
Loss of Care/Comfort and Companionship	Spouse and Children	\$ 3,000,000 +
Decedent's pre-death pain and suffering	10 minutes	\$ 1,000,000 +
<b>Total Compensatory Damages</b>		<b>\$ 9,6020,000+</b>
Punitive damages (if allowed)	Can be greater than compensatory	??
Pre & post judgment interest	Average 9%	??

This has been translated in practice. There is a clear need for more structured care when it comes to families grieving the loss of their members. It is right to compensate, but it is necessary to care for the passengers and their families. Insurance companies, airlines and international organizations - such as ICAO – need to establish a new standard of care to ensure the long-term viability of the aviation industry. Furthermore, the aviation industry needs to stand behind those who support it. It is the duty and social responsibility of the industry to protect and care for those people. Exemplary cases of extremely high awards based on psychological pain, loss of income, grief and anguish follow:

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<sup>209</sup> The data has been kindly shared by Clyde&Co and it will be used exclusively for the purpose of this work.

Death Case: Brokaw v. National Air Cargo (Jun 2017) <sup>210</sup>	Jury Award \$115M	3 crew members killed in National Airlines 747 cargo crash in Bagram, Afghanistan on April 29, 2013.
Death Case: Ramsey v. Landstar Ranger, Inc. (TX, Nov 2021) <sup>211</sup>	Jury Award \$730M	73-year-old great-grandmother killed in a 2016 collision with an oversize-cargo truck hauling a propeller for a U.S. Navy nuclear submarine.
Injury case: Darden v. City of Chicago (Aug 2017) <sup>212</sup>	Jury Award \$148M	Plaintiff a 24-year-old female former dancer and college student. Injured when pedestrian shelter weighing 700 pounds fell on her at O'Hare Airport. Suffered a severed spinal cord and fractures resulting in permanent paraplegia.
Injury Case: Cruz v. Allied Aviation (TX, Oct 2021) <sup>213</sup>	Jury Award \$352M	Wing-walker struck from behind by Allied Van

<sup>210</sup> More information online <[prnewswire.com/news-releases/jury-awards-11575-million-to-families-of-flight-crew-killed-in-afghanistan-cargo-plane-crash-300482616.html](http://prnewswire.com/news-releases/jury-awards-11575-million-to-families-of-flight-crew-killed-in-afghanistan-cargo-plane-crash-300482616.html)>.

<sup>211</sup> More information online <[lewisbrisbois.com/newsroom/legal-alerts/east-texas-jury-awards-730-million-wrongful-death-verdict](http://lewisbrisbois.com/newsroom/legal-alerts/east-texas-jury-awards-730-million-wrongful-death-verdict)>.

<sup>212</sup> More information online <[lexisnexis.com/jvsubmission/b/case\\_of\\_week/archive/2017/08/31/illinois-jury-awards-record-148-million-to-college-student-paralyzed-when-airport-pedestrian-shelter-collapsed.aspx?srsltid=AfmBOopsvM5EITN7cWVVrkzDIJcbCGWwhSVrU7RzmKGs63xbQAgMLsy\\_](http://lexisnexis.com/jvsubmission/b/case_of_week/archive/2017/08/31/illinois-jury-awards-record-148-million-to-college-student-paralyzed-when-airport-pedestrian-shelter-collapsed.aspx?srsltid=AfmBOopsvM5EITN7cWVVrkzDIJcbCGWwhSVrU7RzmKGs63xbQAgMLsy_)>.

<sup>213</sup> More information online <[triallawyersuniversity.com/webinars/cruz-v-allied-aviation---\\$352m-verdict-for-paralyzed-airport-worker---randall-sorrels-&-alex-farias-sorrels#](http://triallawyersuniversity.com/webinars/cruz-v-allied-aviation---$352m-verdict-for-paralyzed-airport-worker---randall-sorrels-&-alex-farias-sorrels#)>.

		driver, paralyzed plaintiff from the chest down.
Injury Case: Repsher v. Air Methods (CO, Feb 2018) <sup>214</sup>	Settlement \$100M	Pilot's wife suffered permanent disability and severe burns to 90% of her body when helicopter crashed in Colorado in 2015.
Injury Case: Boatman v. Uniflight (AZ, Mar 2018) <sup>215</sup>	Jury Award \$24.1M	Plaintiff, adult male, suffered broken spine resulting in paraplegia, because of helicopter crash in Arizona in 2011.
Injury Case – Sanchez v. Airbus (WA, Apr 2018) <sup>216</sup>	Settlement \$40M	Plaintiff, 42-year-old male, suffered traumatic brain injury, fractured back, ribs and shoulder, and PTSD from helicopter crash in Washington.

Seeing these cases is nothing short of interesting and, partly, shocking. Clearly, the issue that most have identified as FNC is not the only one that should be considered. Rejecting form the interpretation of ‘accident’ the mental injury component (including but not limited to pain and suffering, emotional distress, loss and grief) have given free rein to the possibility of people claiming for damages that are higher and higher. However, this approach is unsustainable.

## 2. Introducing the I-CARe Program: International Civil Aviation Relief Effort.

<sup>214</sup> More information online <[robbrobb.com/kc-attorneys-win-100m-settlement-over-colorado-copter-crash](http://robbrobb.com/kc-attorneys-win-100m-settlement-over-colorado-copter-crash)>.

<sup>215</sup> More information online <[napolilaw.com/en/article/24-1-million-dollar-verdict-in-aviation-case/](http://napolilaw.com/en/article/24-1-million-dollar-verdict-in-aviation-case/)>.

<sup>216</sup> More information online <[ainonline.com/aviation-news/business-aviation/2018-05-31/40-million-settlement-seattle-newscopter-crash](http://ainonline.com/aviation-news/business-aviation/2018-05-31/40-million-settlement-seattle-newscopter-crash)>.

Looking at mental health, pain and suffering, this Program is meant to provide a necessary implementation and synergy within the international legal framework of private international air law. Specifically, the Program would be built to supplement the system of *advanced payments*, enshrined in Article 28 of the 1999 Montreal Convention, which provides for a system of financial support towards family members of air crash victims. To complement such structure, the *I-CARe Program* will be accessible on a voluntary basis and will address the specific issues of pain and suffering, loss, grief as well as financial independence. As the *status quo* of the industry has been lacking true psychological support and therapy, the introduction of this Program is meant to offer practical significance for the airline industry: a practical psychological support system accessible to families in the event of air crashes. Sponsored by the airline industry itself, the Program holds the goal to prevent claims of hundreds of millions of dollars. Instead, the compensation would not only award money, but also allow access to psychological care. This because the core question that must be answered is one: what is the value of that money when a person is mentally suffering? How are multi-million dollars awards helping families that are mentally suffering? Where is the relief? Historically, mental health has been overlooked by private air law and its importance has never been recognized on black letter writing at international level. This accepted framework, as well as other factors<sup>217</sup>, gave national jurisdiction great leeway to seek the highest compensation for damages possible. This has been done by the so-called ‘next of kin’ – or families of the victims - particularly in the U.S., which lead to jury awards as high as USD\$ 730MIL.<sup>218</sup> Therefore, the scope of the Program needs to be twofold: ensuring the victim’s families’ right to ease mental health and suffering; and introducing the topic of social responsibility and response of the airline business, including insurance companies and international organizations. At this stage, two questions need to be answered: What type of collaboration and synergy can be sought? And how much can the industry leverage the resources that already exist? The goal of this first stage research is to understand why an effort is necessary and the overall scope of *I-CARe*. Insurance companies are highly invested in cost-efficiency and risk considerations as, first, the type of solution and synergy recommended would directly impact the cost of any form of partnership or sponsorship; second, insurance companies and airline businesses are practical businesses. As such, it is important that the solution envisaged be feasible and practicable, with an easy development and

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<sup>217</sup> Such as the multiple references by international instruments to national jurisdictions.

<sup>218</sup> *Ramsey v. Landstar Ranger, Inc.* (TX, Nov 2021).

implementation scheme. The *I-CARe Program* is meant to rejuvenate the airline industry and provide a much-needed relief, allowing for balance and predictability, promoting social responsibility and an overall favorable outcome for claims arising from families of air crash accidents.

### **3. Protecting mental health in air crashes.**

The resources needed are already available. Including psychological support for families of victims of air crashes in a new relief scheme is not a detail we can opt out from. If solace can't be found in the law, it is this generation's responsibility to find it in practice. Historically, it is understandable why the priority was not the protection of people's minds. Countries were moving forward and moving on from two World Wars, therefore the most important job awaiting aviation professionals was to establish peaceful coexistence in the form of routes and rules to prevent future discord as much as possible. Today, however, society is different, and people need recognition. Airlines and governments, as well as international organization can make a big difference. Firstly, by introducing in their work and mindset the concept of social responsibility, tied together with psychological support. Indeed, social responsibility is a complex subject, affected by culture, laws and practice. However, when it comes to psychological support, a standard understanding can be introduced. Very simply, the airline industry needs to care and cater to people in a different way. Especially because it's the people that keep the industry alive. Court judges have been assigning therapy in various circumstances, depending on the nature of the case, the legal system, and the specific facts involved. Nevertheless, even those scenarios have been highly debated.<sup>219</sup> Nevertheless, the airline industry has never been tackled before. Not to mention, implementing a program like this would be nothing short of challenging. One of the main aspects of this program, essential for its success, would be the uptake at industry level. Airlines would need to be able to adapt to the requests of society, ensuring their social responsibility and awareness in different

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<sup>219</sup> See for instance Jonathan Dickens, Chris Beckett, Sue Bailey (2014) "Justice, speed and thoroughness in child protection court proceedings: Messages from England", 46 Children and Youth Services Review at 103-111; Michelle Edgely (2014) "Why do mental health courts work? A confluence of treatment, support & adroit judicial supervision", 37:6 Int'l J. of L. Psy. At 572-580; and Vicki Lens, Colleen Cary Katz, Kimberly Spencer Suarez (2016) "Case workers in family court: A therapeutic jurisprudence analysis" 68, Children and Youth Services Review at 107-114. In these cases, the goal of ordering therapy is often to address underlying issues, promote rehabilitation, protect vulnerable individuals, and, in some cases, restore family or community relationships.

aspects of sustainability<sup>220</sup> and new standards of passenger care.<sup>221</sup> The I-CARe Program would be implemented by the industry and its access would be granted to all those victims' families that ask for it, on a voluntary basis. The program would come at no extra expense and would lower the economic/compensatory amount recoverable in case of a lawsuit.<sup>222</sup> The purpose of this reasoning is twofold: first, the program would implement stronger passengers' rights, mental health and choice of care; second, it would ensure the longevity of airlines in an ever-changing environment. If airlines are required to issue settlements for hundreds of millions of dollars, the long-term effect of that would be more costs and, in turn, higher prices for passengers. Simply put, there is nothing ensuring longevity and care in the system created today.

#### **4. Current examples of psychological support and outreach services**

Since one of the best forms of poetry is copying someone else, one of the best examples that can be of use in this scenario is that of US military families. Indeed, military families face unique challenges when dealing with loss and grief, particularly because of the nature of military service, which often involves exactly the risk of injury and/or death. In the military, there are various types of support to help families cope with these very difficult moments. Some Military-Provided Support Services include<sup>223</sup>:

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<sup>220</sup> As in the ability of a society to uphold universal human rights and meet people's basic needs, such as healthcare, education, and transportation. Healthy communities ensure personal, labor, and cultural rights are respected and all people are protected from discrimination.

<sup>221</sup> Harold E. McKee, *Aviation Law--Problems in Litigation Arising from Aircraft Disasters*, 37 *Notre Dame L. Rev.* 194 (1961). Accordingly, the operator of a private carrier only has the duty of ordinary care to his passengers See, e.g., *Scarborough v. Aeroservice*, 155 Neb. 749, 53 N.W.2d 902 (1952); while a common carrier is charged with the highest degree of care consistent with the practical operation of its aircraft See, e.g., *Kasanof v. Embry-Riddle Co.*, 157 Fla. 677, 26 So.2d 889 (1946).

<sup>222</sup> Outside of pure legal reflection and structure, one must inquire what is the true value of money. It must be clear that money has no value in compensating grief. Money is a tool that offers possibilities. However, what can those possibilities be if one is truly suffering. It is unwise to assume that every person on this earth is financially independent. And it would be unfair to expect perfect behavior from a deeply suffering person. Clearly, money has no value if it is unwisely spent because of mental suffering, grievance and loss. Nevertheless, this brief reflection does not erase the importance of compensation, rather it adds to it. Psychological support needs to be added on top of what already exists, setting a healthy medium between industry and passengers. Compensation needs to be fair and just and cannot be at the expense of the longevity of the industry, not at the expense of the passengers. A complementary system of support is needed.

<sup>223</sup> Financial and Educational Benefits will not be discussed at length but for comprehensiveness purposes will be briefly listed: Survivor Benefit Plan (SBP): A government program that provides ongoing financial support to the families of deceased service members; Dependency and Indemnity Compensation (DIC): A benefit provided by the Department of Veterans Affairs (VA) to surviving spouses, children, or parents of service members who died in the line of duty or from a service-related injury or disease; and, Educational Assistance (e.g., Fry Scholarship): The Fry

- Survivor Outreach Services (SOS): Offered by the Army, SOS provides long-term support to surviving family members of deceased soldiers. This includes financial counseling, benefits coordination, and connecting families with resources.<sup>224</sup>
- Casualty Assistance Programs: Each branch of the military has casualty assistance officers who help families navigate the process following a service member's death, including arranging funerals, understanding benefits, and providing emotional support.<sup>225</sup>
- Military OneSource: This is a free service provided by the Department of Defense offering a wide range of counseling and support services, including grief counseling, for military families.<sup>226</sup>
- Chaplaincy Services: Military chaplains provide spiritual and emotional support to service members and their families, including grief counseling and religious services related to loss.<sup>227</sup>
- Tragedy Assistance Program for Survivors (TAPS): TAPS is a nonprofit organization that provides comprehensive care to families grieving the loss of a military loved one. They offer peer-based emotional support, grief and trauma resources, and connections to professional counseling.<sup>228</sup>

Community and peer support are major elements that are included in the military's support structure. This is achieved through: (i) *Support Groups*, which are many military installations offer support groups for grieving families, where they can connect with others who have experienced

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Scholarship provides education benefits to the children and spouses of service members who died in the line of duty after September 10, 2001. In Legal and Advocacy Support: Legal Assistance Offices: These offices on military installations can help families with legal matters following a loss, such as wills, probate, and understanding survivor benefits; and Advocacy Organizations: Groups like the American Gold Star Mothers, Inc., and the National Military Family Association provide advocacy and support for grieving military families, helping them navigate the complexities of military benefits and services. Finally, Memorials and Remembrance Events: Memorial Services and Ceremonies: The military often holds memorial services and ceremonies to honor fallen service members, providing families with a sense of closure and community support; and Wreaths Across America: An annual event where wreaths are laid on the graves of fallen service members in cemeteries across the U.S., offering families a way to honor their loved ones.

<sup>224</sup> For more information see online resources at <[armymwr.com/programs-and-services/personal-assistance/survivor-outreach](http://armymwr.com/programs-and-services/personal-assistance/survivor-outreach)>.

<sup>225</sup> For more information see online resources at <[militaryonesource.mil/benefits/casualty-assistance/](http://militaryonesource.mil/benefits/casualty-assistance/)>.

<sup>226</sup> For more information see online resources at <[militaryonesource.mil](http://militaryonesource.mil)>.

<sup>227</sup> For more information see online resources at <[militaryonesource.mil/relationships/married-domestic-partner/the-unit-chaplain-roles-and-responsibilities/#:~:text=Military%20chaplains%20are%20responsible%20for,services%20and%20providing%20confidential%20counseling](http://militaryonesource.mil/relationships/married-domestic-partner/the-unit-chaplain-roles-and-responsibilities/#:~:text=Military%20chaplains%20are%20responsible%20for,services%20and%20providing%20confidential%20counseling)>.

<sup>228</sup> For more information see online resources at <[taps.org](http://taps.org)>.

similar losses; (ii) *Online Communities* and forums, where military families can find support and share their experiences with others going through similar situations; finally, (iii) the *Gold Star Families*, which are those families who have lost a loved one in military service. There are various organizations and events specifically for Gold Star Families that offer support, resources, and a sense of community.<sup>229</sup> Further, mental health and counseling services are always provided and differentiate based on the type of support that is needed.<sup>230</sup> These supports help military families navigate the complex and painful experience of loss, offering practical assistance, emotional support, and a sense of community during a difficult time and they are, most often, sponsored by the US Department of Defense. This is the key takeaway. The Airline industry could ‘borrow a page’ from the military book of care and establish a structure in harmony with the resources that already exist in the realm of the air-industry, such as international organizations that care specifically for victims’ families of air crashes.<sup>231</sup>

#### 4.1 Gold Star Families

For the purposes of this work, it is pivotal to spend more time analyzing and looking into the organization of *Gold Star Families*. *Gold Star Families* are families who have lost a loved one in military service and are supported by various organizations and events that provide emotional support, resources, and opportunities for connection. Those include the *Tragedy Assistance Program for Survivors (TAPS)*<sup>232</sup>, which is a nonprofit organization that offers comprehensive support to families grieving the loss of a military loved one. They provide peer-based emotional support, grief and trauma resources, and connections to professional counseling. The TAPS Program also offers a 24/7 helpline, regional survivor seminars, Good Grief Camps for children, and specialized retreats for different family members. Then, the *American Gold Star Mothers, Inc.*<sup>233</sup> is an is a national nonprofit organization comprised of mothers who have lost a son or

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<sup>229</sup> More at para 4.2.

<sup>230</sup> Some of these include: Veterans Affairs (VA) Bereavement Counseling: The VA provides bereavement counseling to immediate family members of service members who died while on active duty. This includes individual and family counseling to help process grief. <[www.va.gov/burials-memorials/bereavement-counseling/](http://www.va.gov/burials-memorials/bereavement-counseling/)> Military Family Life Counselors (MFLCs): These licensed counselors provide confidential, non-medical counseling services to military families, including those dealing with grief and loss; and Grief Camps: Organizations like Tragedy Assistance Program for Survivors (TAPS) and Camp Corral <[www.campcorral.org](http://www.campcorral.org)> offer specialized camps for children and others who have lost a military parent, providing a supportive environment to process their grief with peers.

<sup>231</sup> See Chapter 3, para 5.

<sup>232</sup> Official page link <[taps.org/advocacy](http://taps.org/advocacy)>

<sup>233</sup> Official page link <[americangoldstarmothers.org](http://americangoldstarmothers.org)>



daughter in military service. It provides emotional support and advocacy for Gold Star Mothers and their families. Within their Program, the organization hosts annual conventions, memorial events, and volunteer opportunities for members to honor their fallen children and support other Gold Star families. And the *Gold Star Wives of America*<sup>234</sup>, which was founded in 1945, is an organization dedicated to supporting the surviving spouses of military service members who have died in the line of duty. They help with benefits, advocacy, and emotional support. The Gold Star Wives of America provides scholarships, financial assistance, and hosts national and regional events to bring together members for mutual support.<sup>235</sup>

These organizations and events create a strong sense of community for Gold Star Families, offering them vital support and the opportunity to honor their loved ones in a meaningful way. Luckily, such frameworks are not the only ones that exist, and the airline industry can take inspiration from those and integrate them into the already-existing resources that are available in this industry.

## **5. The role of aircraft victims' associations**

While organized differently, the position of the associations/organizations for aircraft accident victims' families is just as important and needs to be explored. There are many similarities with the military system that should be highlighted and implemented at industry level. Indeed, while the military resources are financed and supported by the government and the parties involved in military activity, so the airline industry should think about its involvement in those victims' association activity. The main role of these associations involves advocating for the rights, support, and recognition of those who have lost loved ones in aviation disasters.<sup>236</sup> Generally, such associations advocate for victims' rights in terms of fair compensation, legal representation as well

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<sup>234</sup> Official page link <[goldstarwives.org](http://goldstarwives.org)>

<sup>235</sup> There are several events dedicated to those families, symbolizing the importance of community and support during hard times, such as loss and grief. Examples include: *National Gold Star Family Day*, honoring the families of fallen service members; *Wreaths Across America*, which is an annual event where volunteers lay wreaths on the graves of fallen military personnel in cemeteries across the U.S., including Arlington National Cemetery; *Gold Star Family Events*, which hosts special events and luncheons for Gold Star Families, offering them a chance to remember their loved ones and connect with others; *TAPS National Military Survivor Seminar and Good Grief Camp* for children; *Fisher House Foundation's Hero Miles Program*, which provides free air travel for families of service members receiving medical care, but it also assists Gold Star Families in attending events, memorials, and reunions; finally, the Gold Star Family Weekends and Camps.

<sup>236</sup> Associations may advocate on several different areas, such as: Improvement of Safety Standards, Participation in Accident Investigations, International Cooperation, Long-Term Support and Advocacy and Public Awareness and Education. ICAO, Facilitation Panel, WP/24, February-March 2024, Montreal.

as transparency and accountability.<sup>237</sup> For the first, they push for fair and adequate compensation, which includes ensuring that the airlines, manufacturers, and insurers provide appropriate settlements. Secondly, the association might support victims' families in obtaining legal representation to pursue claims against the parties just mentioned. Finally, the association may also push for greater transparency in the investigation of aircraft accidents and for holding accountable those responsible for failures that led or caused the accident.<sup>238</sup> Moreover, those associations ensure support and resources for families that have been impacted by air crashes, not only materially but also emotionally. They provide emotional and psychological support, which may include offering access to grief counseling, support groups, and other mental health resources. The organizations might work to ensure that families receive timely and accurate information about the status of investigations and any legal proceedings related to the accident. Finally, another important role of these organizations is to advocate for the establishment of memorials or other means of honoring the memory of the victims.<sup>239</sup>

### **5.1 The Air Crash Victims' Families Federation International (ACVFFI)**

One prominent example of such an organization is the *Air Crash Victims' Families Federation International (ACVFFI)*,<sup>240</sup> which represents the interests of victims' families globally. ACVFFI is involved in advocating for safety improvements, providing support to families, and ensuring that their voices are heard in international aviation discussions. Essentially, an association for aircraft accident victims' families is committed to supporting all those who have been affected by aviation disasters, advocating for their rights, promoting safety improvements, and ensuring that the memory of victims is honored.<sup>241</sup> Providing emotional and psychological support to families of aircraft accident victims is a critical aspect of helping them cope with loss. Some of the services offered relate to grief counseling, support groups, memorial services and remembrance rituals, long-term mental health resources, children and youth support, trauma informed care, practical

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<sup>237</sup> Resources available online <[aircrashvictims.com/icao/](http://aircrashvictims.com/icao/)>.

<sup>238</sup> For more see testimony of Rafael Vidal, Survivor of the JK5022 flight (Madrid – Gran Canarias 2008). 154 casualties, 18 survivors; online <[aircrashvictims.com/wp-content/uploads/2023/06/211201\\_RVidal\\_AAASF21.pdf](http://aircrashvictims.com/wp-content/uploads/2023/06/211201_RVidal_AAASF21.pdf)>.

<sup>239</sup> ICAO Report, *supra* note 114, instituting February 20 as the *International Day Commemorating Air Crash Victims and their Families*.

<sup>240</sup> Website link for more information <[aircrashvictims.com](http://aircrashvictims.com)>

<sup>241</sup> Pilar Vera Palmés, “Past, Present and Future: 75 years Enabling Air Transport” (2024) online <[aircrashvictims.com/wp-content/pdf/240517\\_ACVFFI\\_PPoint\\_FAL24\\_EN.pdf](http://aircrashvictims.com/wp-content/pdf/240517_ACVFFI_PPoint_FAL24_EN.pdf)>.

assistance and cultural and religious sensitivity. On grief counseling, ACVFFI offers individual counseling, family therapy and crisis intervention. The first offers one-on-one therapy sessions with licensed mental health professionals can help family members process their grief, manage trauma, and cope with the emotional aftermath of losing a loved one in an aircraft accident. These sessions provide a safe space for individuals to express their feelings, work through their pain, and develop coping strategies. Second, family therapy can help survivors navigate the complex dynamics that arise after a tragic loss. It can be particularly beneficial in helping family members support one another, communicate effectively, and work through collective grief. This type of therapy can also address issues like survivor's guilt, anger, and the strain on relationships caused by the tragedy. And, on crisis intervention, immediately following the accident, families might require this service to address the intense emotional and psychological shock. Trained professionals can provide immediate support, helping families manage their initial reactions and begin the process of grieving.

Processing loss and any related trauma is hard; therefore the association focuses on support groups as well. Those can be peer support groups, online support communities, and even specialized groups. Peer support groups bring together families who have experienced similar losses and are facilitated by trained counselors or therapists. Those support groups provide a space for individuals to share their experience, receive emotional support and learn from others that have suffered through similar situations. Sense of community can be incredibly healing, as participants realize they are not alone in their grief.<sup>242</sup> Online support communities can also be a helpful resource. For those who have not access to in-person support groups, or to those who like more flexible options,<sup>243</sup> online groups can be a safe virtual space for connection and healing. Those forums, chat rooms, virtual groups, allow families to share their stories, seek advice and provide mutual support from the safety and comfort of their own home. Finally, specialized groups are tailored to specific needs, namely parents who have lost their children, vice versa, spouses who have lost their partner, siblings who have lost a brother or sister. Those groups are specifically tailored to address those challenges and emotions associated with different types of loss.

Grief and loss come with the aspect of remembrance. Memorial services and events are also organized. There are commemorative events can provide a structured way to mourn together,

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<sup>242</sup> Rafael Vidal, *supra* note 238.

<sup>243</sup> See para 6.2.

whether immediately after an accident or on the anniversary. Those events include speeches, moments of silence, sharing memories all of which can help with the grieving process. As for personalized memorials, some organizations offer support in creating personalized memorials such as planting a tree, setting up a specific scholarship in the victim's name, organizing an annual event. These acts of remembrance can help families keep the connection to their loved ones and find meaning in their loss.

On the long-term, families have access to different resources such as continued access to therapy, workshops and seminars and bereavement programs. Indeed, recognizing that grief does not have a set timeline, ongoing access to mental health services is crucial.<sup>244</sup> Associations may help connect families with therapists who specialize in trauma and grief, ensuring they receive long-term support. Educational workshops and seminars can provide families with tools and techniques to manage their grief, cope with triggers, and handle anniversaries or other difficult milestones. These might include sessions on mindfulness, stress management, or coping with loss during holidays.

Children and youth support is also important and can be ensured via child and adolescent counseling, grief camps for kids and educational support. In fact, children and teenagers may process grief differently than adults, often needing specialized support. Child psychologists or counselors can provide age-appropriate therapy, helping young people express their emotions and understand their loss. As mentioned for the military, some organizations offer grief camps where children who have lost a family member can come together in a supportive environment. These camps combine traditional camp activities with counseling sessions and group discussions, helping kids heal in a setting where they can also have fun and form new friendships. Most importantly, recognizing that grief can impact academic performance, some associations may provide educational support services for grieving children, such as tutoring or school liaison services to help educators understand and accommodate the child's needs.<sup>245</sup>

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<sup>244</sup> This is a conversation as long as time. See Klepser, Mary Jo. "GRIEF, How Long Does Grief Go On?" (1978) 78:3 AJN, American Journal of Nursing at 420-421.

<sup>245</sup> For instance, in Quebec, Camp Erin is a bereavement camp that helps children process the loss of a loved one. Online:  
<[find.acacamps.org/program\\_profile.php?back=camp\\_profile&program\\_id=13626#:~:text=Camp%20Erin%20is%20the%20largest,significant%20person%20in%20their%20lives](http://find.acacamps.org/program_profile.php?back=camp_profile&program_id=13626#:~:text=Camp%20Erin%20is%20the%20largest,significant%20person%20in%20their%20lives)>.

Specialized Trauma Counseling may also be provided, particularly in cases where the circumstances of the accident were particularly traumatic. Specialized trauma counseling might be necessary. This can include therapies such as Eye Movement Desensitization and Reprocessing (EMDR)<sup>246</sup>, Cognitive Behavioral Therapy (CBT)<sup>247</sup> for trauma, or other approaches designed to help individuals process and recover from traumatic events. Associations might also provide access to 24/7 hotlines staffed by counselors trained in crisis intervention and trauma support. These hotlines offer immediate assistance to family members experiencing intense emotional distress.

Not less important is the support offered for the general management of financial resources and any other aspect of life immediately after the loss. Dealing with its ‘practical’ aspects, such as managing affairs, handling legal issues, and accessing benefits, can be overwhelming is just as crucial as dealing with the psychological impact of loss.<sup>248</sup> Associations might provide caseworkers or liaisons to help families navigate these tasks, reducing stress and allowing them to focus on their emotional healing. Resources may also be offered, including books, articles, and videos on grief and loss, which families can use to educate themselves and find comfort in their own time. Finally, understanding that grief is experienced differently across cultures and religions, associations might offer tailored support that respects and incorporates the family’s cultural or religious practices. This could involve connecting families with counselors who share their background or providing resources that align with their beliefs.<sup>249</sup>

The *Air Crash Victims' Families Federation International* (ACVFFI) is an organization dedicated to supporting the families of victims of air crashes and advocating for aviation safety and the rights of those affected by such tragedies. Further, the organization is committed to prevention, particularly promoting aviation safety. They work with international aviation authorities, airlines, and governments to push for improvements in safety standards, regulations, and practices. Indeed, ACVFFI provides emotional, psychological, and legal support to families in the aftermath of an air crash. They help families all over the world navigate the complex legal and bureaucratic

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<sup>246</sup> Carlson, J.G., Chemtob, C.M., Rusnak, K., Hedlund, N.L., & Muraoka, M.Y. “Eye movement desensitization and reprocessing for combat-related posttraumatic stress disorder” (1998) 11 *Journal of Traumatic Stress* at 3–24.

<sup>247</sup> Hofmann, S.G., Asnaani, A., Vonk, I.J.J. et al. “The Efficacy of Cognitive Behavioral Therapy: A Review of Meta-analyses” (2012) 36 *Cogn Ther Res* at 427-40.

<sup>248</sup> See Karen Gross, “Portraits of Grief: A Focus on Survivors” (2003) 22:Issues 1 & 2 *NYL Sch J Int'l & Comp L* 261.

<sup>249</sup> ICAO Report, *supra* note 114.

processes that follow such disasters, and they offer resources to assist with grieving and healing, and they ensure ensuring that the voices of victims' families are heard in global aviation forums.<sup>250</sup> ACVFFI often collaborates with other national and international organizations, including government agencies, regulatory bodies like the International Civil Aviation Organization (ICAO), and other non-profits focused on aviation safety and victims' rights.<sup>251</sup> The association addressed safety recommendations, legal and policy changes and participation in investigations, working to influence international aviation policy, often pushing for stronger regulations and better enforcement of existing rules.<sup>252</sup> Moreover, ACVFFI provides guidance and resources to help families obtain legal representation. They may offer referrals to lawyers who specialize in aviation law and who can assist with claims for compensation and other legal matters. The organization offers emotional support services, including access to counseling, support groups, and other mental health resources. Further, it ensures that families receive accurate and timely information about the crash, the investigation, and any legal proceedings. While not being the greatest to deliver messages so incredibly sensitive and of particular relevance, the association has been an active advocate for victims' families rights and their support. This aspect is not to be overlooked, as community and connection often are the elements necessary to process loss, not money. As an international association with large scope, ACVFFI engages in public awareness campaigns to highlight the issues surrounding aviation safety and the needs of victims' families. These campaigns often aim to educate the public and policymakers about the importance of rigorous safety standards and the human impact of air crashes. The organization also hosts conferences, workshops and seminars focused on aviation safety, victims' rights and advocates to share knowledge and collaborate on solutions.<sup>253</sup> There are several challenges that ACFFI faces, including the complexity of working in an international industry, in which the legal landscapes across countries can vary significantly. Probably, one of the most important aspects of their activity at human level is the creation of a supportive community, a key element to bring together families that have suffered aviation related losses. They support efforts to create memorials and organize events that honor the memory of those who have lost their lives.<sup>254</sup>

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<sup>250</sup> *Idem*.

<sup>251</sup> Press releases available online: <[aircrashvictims.com/events/](http://aircrashvictims.com/events/)>.

<sup>252</sup> ICAO Report, AAACVF Symposium, *supra* note 114.

<sup>253</sup> More online: <[aircrashvictims.com/aboutus/who-we-are/](http://aircrashvictims.com/aboutus/who-we-are/)>.

<sup>254</sup> See more online: <[aircrashvictims.com/activity/fal2024/](http://aircrashvictims.com/activity/fal2024/)>

In summary, providing emotional and psychological support to the families of aircraft accident victims involves a comprehensive approach that addresses immediate needs, offers long-term care, and recognizes the unique grief journey of everyone. These services help families navigate their loss, find support in their community, and move toward healing. Their work is essential in ensuring that the voices of those affected by aviation disasters are heard and that meaningful changes are made to prevent future tragedies. And we are left to wonder why these systems don't work better together. The resources exist and the competencies as well. Therefore one must wonder: what exactly has prevented a higher integration and introduction of psychological support in the industry? The balance is hard, but leaving the topic alone will only be beneficial if no accidents occur. While this is a wonderful scenario, Aviation will never be a risk-free operation. So, how can this future generation help solve the issue?

## **6. Psychological support in the context of liability and insurance**

What are the intricacies of insurance policies? One might start by carefully analyzing the policy language, understanding the relevant legal frameworks, and considering the specific circumstances of the case.<sup>255</sup> Policy language is very important, as it tackles the policy provisions and its definitions. Considerations would extend to each clause, understanding whether and how therapy is covered. This includes looking at sections related to mental health services, outpatient care, or any exclusions or limitations on coverage for therapy. Insurance policies often contain definitions of terms that can impact coverage. This practice is essential in the context of mental health related services or scope as it defines terms like 'therapy', 'mental health services', 'medically necessary,' and 'pre-existing conditions' to understand how these definitions might affect one's coverage.<sup>256</sup> This is important as policies often present exclusions or limitations, which means that even when 'therapy' is included, the definition might not cover all types of therapy available (e.g. alternative therapies or experimental treatments). Legal and regulatory frameworks have an impact on insurance policy. State and Federal laws may impact the coverage of therapy, such as the Mental

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<sup>255</sup> Aviation risk and recovery and risk management are essential practical aspect of all the reflections that will follow. For the purposes of this work they will not be analyzed at length. Further information can be found: Li, X., Romli, F. I., Azrad, S., & Md Zahir, M. A. "An Overview of Civil Aviation Accidents and Risk Analysis" (2023) 1:1 *Proceedings of Aerospace Society Malaysia* at 53–62.

<sup>256</sup> These considerations, while important, won't be discussed at length. For more see Mechanic, David. "Establishing Mental Health Priorities." (1994) 72:3 *The Milbank Quarterly* at 501–14; BARRY, COLLEEN L., *et. Al.* "A Political History of Federal Mental Health and Addiction Insurance Parity." (2010) 88:3 *The Milbank Quarterly* at 404–33.

Health Parity and Addiction equity Act 2008 (MHPAEA) in the United States which is a federal law that generally prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than on medical/surgical benefits.<sup>257</sup> This leads to the notion and need of analyzing the ‘medical necessity’. Insurance policies often cover those services that are deemed ‘medically necessary’. Therefore, this assessment enables reflections on whether the therapy in question meets the standard. This is done by reviewing medical records, recommendations from health care providers and expert opinions.

All these considerations are exactly the elements that the I-CARe Program would divorce from. The Program would be designed to offer therapy, any type of therapy scientifically proven to be effective in the event of grief and loss, having insurance companies rather be sponsors than ‘regulators.’ In fact, the most important considerations relate to finding a balance between therapy and insurance costs. If the inclusion of therapy in airline’s insurance policies needs to be weighed against the interests of the latter, then maybe a system of sponsorship and/or partnership with the AAACFI could be envisaged. This because the interest in the Program need not be one sided. Meeting criteria that support both industry and passengers’ health and rights is fundamental. However, it is apparent that the intricacies and reforms would be substantial and perhaps too difficult if airlines and insurance companies had to re-evaluate a great aspect of their insurance coverage and policy.

### **6.1 Spurring psychological support into airline insurance policies: challenges**

Adding therapy coverage to existing insurance plans for airline passengers and their ‘next of kin’ in case of air crashes presents several challenges, ranging from cost considerations to regulatory compliance. Expanding or re-imagining airline insurance coverage to include therapy would lead to higher insurance premiums. This means that airlines and insurance providers would need to assess whether the added costs could be absorbed or if they would need to pass these costs on to passengers. Therapy services, particularly mental health care, can involve ongoing or long-term treatment, leading to higher claims costs. Hence, insurers would need to estimate these costs and adjust their pricing models accordingly. On top of that Predicting the demand for therapy services

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<sup>257</sup> Mental Health Parity and Addiction equity Act 2008 (MHPAEA) (Pub L No. 111-148).



can be difficult, especially in a new coverage area. Insurers might face challenges in accurately pricing premiums due to the uncertainty in utilization rates. On the regulatory side, there are important considerations that involve differences in state laws, such as the 2008 (MHPAEA) in the United States<sup>258</sup>. Insurers would have to ensure that the therapists and mental health providers covered under the policy meet licensing and credentials standards in various jurisdictions, which can vary greatly. Expanding coverage to include therapy involves sensitive personal information, raising concerns about how mental health data is handled, stored and shared, particularly in compliance with laws like the Health Insurance Portability and Accountability Act (HIPPA)<sup>259</sup> in the United States and the General Data Protection regulation (GDPR)<sup>260</sup> in the European Union. Further, deciding what types of therapy to cover and for which conditions can be challenging. There is a wide range of possibilities, such as individual counseling, group therapy, teletherapy and decisions to include which therapy to consider is challenging to say the least. Also, insurers might want to place limitations on the number of therapy sessions, or the types of therapies covered. However, balancing these limitations with the needs of passengers could be challenging, potentially leading to dissatisfaction or disputes. Airlines and insurers would also need to establish protocols for handling situations where therapy identifies more serious mental health issues, including potential risks to safety or wellbeing.

On the administrative side, a few challenges can come up. Integrating therapy coverage into existing insurance plans requires significant administrative changes, including updating plan documents, training customer service representatives, and adjusting claims processing systems. On top of that, Airlines and insurers would need to effectively communicate the new benefits to employees or passengers, ensuring they understand how to access therapy services and what is covered.

Addressing stigma would be just as important.<sup>261</sup> There can be stigma associated with seeking mental health treatment, particularly in industries like aviation. The integration of any policy based around therapy and mental health needs to start from the belief of airlines themselves, encouraging

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<sup>258</sup> See *supra* para 6 ‘Psychological support in the context of liability and insurance’.

<sup>259</sup> Health Insurance Portability and Accountability Act (HIPPA), Pub. L. No. 104-191 (1996).

<sup>260</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJEU L119/1

<sup>261</sup> ICAO Report, *supra* note 114, on the AAVF Symposium 2021 point 1.2.4 “The ACVFFI noted that in many cases the initial interaction of family members with State authorities, airline and/or airport representatives was callous, merciless and somewhat disrespectful regarding the cultural and religious traditions.”

the use of therapy services. Effective outreach and education are needed and encouraged. As airlines operate globally, insurance plans would need to account for variations in healthcare systems, availability of mental health services, and cultural attitudes towards therapy might change significantly in different countries – which is why a greater and more substantial cooperation with the ACVFFI should be considered.

Lastly, evaluating the effectiveness and utilization of therapy benefits could be challenging. Insurers and airlines would need to develop metrics to assess whether the inclusion of therapy is improving mental health outcomes and overall wellbeing of victims' families. At the same time, data security will be a pivotal aspect to consider. Handling sensitive mental health data securely and in compliance with varying international data protection regulation will be crucial. In summary, while adding therapy coverage to insurance plans for airlines offers significant potential benefits, it also presents a range of challenges that require careful planning, coordination, and communication among all stakeholders.

## **6.2 Adding psychological support to airline insurance policy: addressing the challenges**

As it was presented above, the scenario is complex. Increases in insurance costs, data privacy and compliance, accessibility, the identification of the best therapy method, establishing a protocol and addressing stigma can be overwhelming. However, this process of re-invention does not have to be built from ground zero. In fact, if adding therapy in insurance policy would be very difficult, airlines and governments could consider embracing the activity and work of the ACVFFI and imagine a new business model to involve them directly. On the Association's side, this would mean shifting the approach that they have adopted in the latest years. Taking a page from the US military book on family assistance, airlines and governments could become sponsors of the association, integrating part of their business-driven mentality into its workings. The one, true goal of ACVFFI is to ensure the wellbeing and the processing of grief experienced by air crash victims' families. To do so, foreseeing a more concrete collaboration and cooperation with the airline industry seems essential. If calculating a new insurance coverage would be too complicated, a collaboration with ACFFVI could be strategic. As mentioned above<sup>262</sup>, claims have been incredibly high. To ensure the longevity of the airline business, it is necessary to find a balanced approach to deal with the pain and suffering, economic loss, loss of support etc., and the needs of

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<sup>262</sup> See page 45, paragraph 1.1 "The US Example – Damages in a Passenger Death Case".

the industry. It is not enough on the industry side to assess a loss in an economic way. Social responsibility needs to be considered. On the passengers' side, starting claims like those is not a solution. Any claim that is raised and settled for massive amounts of money will indirectly reflect of the cost of air travel, leaving passengers altogether dissatisfied. In the case a framework for mental health care after loss would be implemented, airlines would still be liable to compensate the loss, but victims would not be able to ask for several hundreds of millions in compensation. This may seem like a cold approach, but the reasoning is quite simple: the one true need of the industry is to strike a balance. If airlines were to decide to uptake such a project, protecting and effectively assisting victims in their trauma, victims would be entitled to a compensation that does not project elements of pain and suffering, loss of companionship, loss of support (except for financial support) and such claims. Grief is not fixed by paying someone out, nor the reputation of the airline is protected by paying out peoples' sufferings. It has been a successful strategy in many cases but one must wonder: has It really? Money is not going to fix pain, loss and grief. At best, it can pay off someone's debt and enable an economically easier life, at worst, it can lead to misspending, addiction and unwise investments.

When addressing access to therapy, one of the perks of this generation is the availability of safe and secure mental health platforms.<sup>263</sup> Access to therapy can be very difficult, and not just monetarily. People lead busy lives and may not have the flexibility to physically move from one space to the other, with the necessary frequency. Nevertheless, nowadays there are so many options and platforms already set up that match the person with their therapy needs. Seeking collaborations and partnerships with those instruments, or just analyzing them further would be a great steppingstone in the right direction. As it is often done with technology and AI, setting up a controlled trial or a 'sandbox' trial would be fascinating. After a full analysis is set up, with the involvement of the airline industry and consensus is gathered, it would be interesting to see the results that a support Program like *I-CARe* could reach.

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<sup>263</sup> There are several mental health platforms already. Partnerships could be sought. Psychological support platforms include *Better Help*, *Uno Bravo*, *Brightside*, *Talkiatry*, *Calmerry*, *talkspace*, *TeenCounseling*, *ReGain*, *One Path Collective* and many more.



## Conclusion

Private and public international air law has developed significantly throughout time. From the 1929 Warsaw Convention to the 1944 Chicago Convention and 1999 Montreal Convention, the topic of air accidents and family assistance has been investigated and studied quite extensively.

In the 1929 Warsaw Convention the initial definition of ‘injury’ and ‘accident’ was explored. This was quickly followed by the introduction of the 1999 Montreal Convention system, which renewed parts of the international instrument and introduced necessary reforms to liability. Therefore, in the first Chapter, topics such as liability, advanced payments and the evolution of the term ‘accident’ were explored. Besides the evolution of those instruments, a stronger focus was devolved to the implications of air ‘accidents’, the system of liability and advanced payments. Through *Air France v. Sacks* the commonly understood and accepted definition of ‘accident’, in line with the travaux préparatoires, has been introduced. *Eastern Airlines v. Floyd*, *Burnett v. TWA* and *Rosman and Herman v. TWA*, and others, clearly showed that such definition did not comprehend mental injury or anguish, unless it derived from a bodily injury. Further, *BT v. Laudamotion GmbH* case and the Überlingen accident clearly showed the multi-faceted nature of damage recovery and liability of the parties involved in air accidents. Further, the system of advanced payments has been explained and analyzed in its foundational elements. As advanced payments, under article 28 of the 1999 Montreal Convention, introduced financial support for the families of air crash victims, a new perspective has been taken as to imagine a system that includes non-financial related assistance as well.

To do so, in Chapter two, new horizon and approaches have been explored. Chapter two introduced such focus. Starting from the workings of ICAO and of international associations, such as the US Military associations and organizations. Their contributions have been illustrated, as they represent important steppingstones towards the understanding and welcoming of new measures that would allow a greater understanding and support of mental anguish, loss and grievance.

On liability, it has been clearly described how the system of the Montreal Convention 1999 includes what are called compensatory damages and not punitive damages. Compensation for damages includes pecuniary damages as well as some non-pecuniary damages. However, non-pecuniary damages are not always recoverable and, depending on jurisdiction, the recovery may be somewhat more limited or difficult. Hence, the topic of *forum non conveniens* was explored.

Insurance has been discussed to supplement the role of liability in air crashes and describe its intricacies. Insurance companies are faced with major considerations during air accidents investigations, such as aircraft recovery and risk management. While those technical topics have not been analyzed at length, special attention has been paid to the access that victims have to insurance as well as the various complex aspects of airline and aircraft insurance. Those elements are fundamental for the understanding of how a psychological support program could/would/should play a role in future policies.

In Chapter three, the case of the European Union has been presented, as the intricacies of uniform application and different interpretations have been a struggle in latest years. While the CJEU has been distancing itself from the commonly understood definition of ‘accident’, this author was left wondering if there is something to learn from it. Maybe it is time for a change. On that topic, the example of the US is pivotal, with emerging lawsuits that run as high as hundreds of millions in compensation. Those lawsuits have brought to clear attention the need to truly consider mental anguish and psychological support as elements that are worthy of attention as well as practical support.

Finally, a more holistic picture has been presented. Including important reflections on the relevance and importance of mental health, therapy and healing. Using the case of different associations and organizations that have been pushing for the mental and physical healing of victims’ families. The example of the US military had been overviewed as well as the ACCFVI. While the structure presented may not be completely satisfactory in identifying a solution, it offers endless amounts of reflections and possibilities for a better management of mental health, trauma, loss and grief in the context of air accidents. While this author could not provide any concrete solution to a legal system that has been developing for years, it has introduced a new possibility of international cooperation, as well as an important reflection of the concept of social responsibility of airlines and mental health inclusion. Hopefully, this new outlook will be able to generate dialogue that will accomplish the one thing truly necessary: change.

## BIBLIOGRAPHY

Adediran Adejoke O., “States’ Responsibility concerning International Civil Aviation Safety: Lessons from the Malaysia Airlines Flight MH17 Air Crash” (2015) 14:2 *Issues Aviation L & Pol’y* 313.

*Aircraft Financing* (Simon Hall ed., 2d ed. 1993).

Areal Ludeña Santiago & Jorge Alberto Fierro Abella, “La responsabilidad internacional del transportista aéreo en caso de muerte o lesión de pasajeros: ‘forum shopping’ y futuro del Convenio de Montreal de 1999. Análisis jurídico y económico” (2009) 57:1 *Estudios de Deusto* 11.

Barry, Colleen L., *et. Al.* “A Political History of Federal Mental Health and Addiction Insurance Parity.” (2010) 88:3 *The Milbank Quarterly* at 404–33.

Bennett, Simon “The 1st July 2002 Mid-Air Collision over Überlingen, Germany: A Holistic Analysis” (2004) 6:1 *Risk Management* 31–49.

Berezowski Cezary, “Le développement progressif du droit aérien” (1969) 128 *Recueil des Cours de l’Académie de Droit International* 1.

Bills Kym, Leesa Costello, Marcus Cattani “Major aviation accident investigation methodologies used by ITSA members” (2023) 168 *Safety Science* at 106315.

Brooker Peter “The Überlingen accident: Macro-level safety lessons” (2008) 46:10 *Safety Science* at 1483-1508.

Caplan Harold, “The Aviation Insurance Clauses Group: A Model for Other Markets?” (2006) 31:4/5 *Air & Space L.* 254.

Carlson, J.G., Chemtob, C.M., Rusnak, K., Hedlund, N.L., & Muraoka, M.Y. “Eye movement desensitization and reprocessing for combat-related posttraumatic stress disorder” (1998) 11 *Journal of Traumatic Stress* at 3–24.

Cheng Bin, “A New Era in the Law of International Carriage by Air: From Warsaw (1929) to Montreal (1999)” (2004) 53:4 *Int’l & Comp L. Q* 833.

Cheng Bin, “The Labyrinth of the Law of International Carriage by Air – Has the Montreal Convention 1999 Slain the Minotaur?”, (2001) 50:2 *ZLW* 155.

Cheng Bin, *The 1999 Montreal Convention on International Carriage by Air concluded on the Seventieth Anniversary of the 1929 Warsaw Convention*, Part I: [2000] *ZLW*, 287; Part II: [2000] *ZLW*, 484.

Clarke, M., & Leloudas, G. (2016), *Air Cargo Insurance* (1st ed.). Informa Law from Routledge at 25.

Cluxton David, “The West Caribbean Conundrum: The United States versus France on the Availability of Forum Non Conveniens under the Montreal Convention of 1999” (2020) 85:1 *J Air L & Com* 3.

Correia Vincent, “Cour de justice, 4e ch., 19 décembre 2019, Niki Luftfahrt”, in Fabrice Picod (ed.), *Jurisprudence de la CJUE 2019* (Brussels: Bruylant, 2020) at 1088.

Coyle Richard C., “Choice of Law in International Aviation Accidents” (Spring 1981) 16:4 *The Forum ABA* at 658-78.

Dempsey Paul Stephen, “Aviation Liability Law” (Eds.).

Derache Caroline, “Forum Shopping in Air Law: Analysis of the Situation in France from a Defence Lawyer’s Perspective” (2020) 45:6 *Air & Space L.* 611.



Dickens Jonathan, Chris Beckett, Sue Bailey (2014) “Justice, speed and thoroughness in child protection court proceedings: Messages from England”, 46 Children and Youth Services Review at 103-111.

Diederiks-Verschoor Isabella & Pablo Mendes de Leon, *An Introduction to Air Law*, 9<sup>th</sup> ed. (Alphen aan den Rijn: Kluwer Law, 2012).

Duin, Darin D., “Premium Finance, What Is It, Who Is It for and Where Is My Risk?” (2021) 81:5 Iowa L at 22-4.

Edgely Michelle “Why do mental health courts work? A confluence of treatment, support & adroit judicial supervision” (2014) 37:6 Int’l J of L Psy at 572-580.

Fauchille Paul, “Le domaine aérien et le régime juridique des aérostats” (1901) 8 :4 Revue générale de droit international public 414.

Fike Linus R., “The Citeja” (1939) 10:2 Air L Rev 169.

Folchi Mario O., *Tratado de derecho aeronáutico y política de la aeronáutica civil*, (Buenos Aires: Astrea, 2015) at 477.

Goedhuis, National Airlegislations and the Warsaw Convention 199 (1973).

Grigorieff Cyril-Igor, “Case Laudamotion: The CJEU Rules that Severe Mental Injury Equals Bodily Injury Under the 1999 Montreal Convention” (2023) 48:1 Air & Space L. 1.

Grigorieff Cyril-Igor, *Uniformity and Fragmentation of the 1999 Montreal Convention on International Air Carrier Liability* (The Hague: Kluwer Law, 2022) at 88-90.

Grigorieff Cyril-Igor, *Uniformity and Fragmentation of the 1999 Montreal Convention on International Air Carrier Liability* (The Hague: Kluwer Law, 2022).

Gross, Karen "Portraits of Grief: A Focus on Survivors" (2003) 22:Issues 1 & 2 NYL Sch J Int'l & Comp L 261.

Guzhva Vitaly S., Sunder Raghavan, Damon J. D'Agostino, (Elsevier, 2024 Second Ed.) "Aircraft Leasing and Financing" Chapter 5 at 123-154.

Hanna Schebesta, 'Risk Regulation Through Liability Allocation: Transnational Product Liability and the Role of Certification'. *Air & Space Law* 42, no. 2 (2017): 107–136.

Harding Justyn, Matthew Maddocks Gaynore Moss and Andrew Pryde, "Aviation Insurance", Institute and faculty of Actuaries available online <[actuaries.org.uk/system/files/documents/pdf/harding.pdf](http://actuaries.org.uk/system/files/documents/pdf/harding.pdf)>.

Harold E. McKee, *Aviation Law--Problems in Litigation Arising from Aircraft Disasters*, 37 *Notre Dame L. Rev.* 194 (1961).

Hassan, Farooq, "The Shooting down of Korean Airlines Flight 007 by the USSR and the Future of Air Safety for Passengers" (1984) 33:3 *The International and Comparative Law Quarterly* 712–725.

Hofmann, S.G., Asnaani, A., Vonk, I.J.J. et al. "The Efficacy of Cognitive Behavioral Therapy: A Review of Meta-analyses" (2012) 36 *Cogn Ther Res* at 427-40.

Holloway Stephen, *Aircraft Acquisition Finance* (1992); see also Michael D. Rice, "Current Issues in Aircraft Finance" (1991) 56J. *AIR L. & CoM.* at 1027.

Huang Jiefang, *Aviation Safety through the Rule of Law – ICAO's Mechanisms and Practices* (Alphen aan den Rijn: Kluwer Law International, 2009).

Hungerford Robert F., Rupert M., Shore, “Damages: A Catalyst for Jurisdictional Disputes in Aviation Accidents” (1996-1997) 62 J. Air L. & Com. 1037.

Ide John Jay, “The History and Accomplishments of the International Technical Committee of Aerial Legal Experts (C.I.T.E.J.A.)” (1932) 3:1 J Air L 27.

Klepser, Mary Jo. “GRIEF, How Long Does Grief Go On?” (1978) 78:3 AJN, American Journal of Nursing at 420-421.

Kuhn Arthur K., “The Warsaw Convention on International Transportation by Air” (1930) 24:4 Am J Intl L 746.

Latchford Stephen, “The Warsaw Convention and the C.I.T.E.J.A.” (1935) 6:1 J Air L 79.

Lawson Robert, “Unusual but Perhaps not Unexpected: The Lonely Furrow Ploughed by the CJEU in Respect of an Article 17 ‘Accident’” (2023) 48:1 Air & Space L. 1 at 10.

Lens Vicky, Colleen Cary Katz, Kimberly Spencer Suarez (2016) “Case workers in family court: A therapeutic jurisprudence analysis” 68, Children and Youth Services Review at 107-114.

Li, X., Romli, F. I., Azrad, S., & Md Zhahir, M. A. “An Overview of Civil Aviation Accidents and Risk Analysis” (2023) 1:1 *Proceedings of Aerospace Society Malaysia* at 53–62.

Lowenfeld & Mendelsohn, The United States and the Warsaw Convention, 80 Harv.L.Rev. 497, 498-500 (1967).

Lowenfeld Andreas F., “Mass Torts and the Conflict of Laws: The Airline Disaster” (1989) U. Ill L. Rev. 157 at 157.

Lureau, Daniel, *La responsabilité du transporteur aérien – Lois nationales et convention de Varsovie* (Paris: LGDJ, 1961) at 5.

Margo Rod D., “Aircraft Leasing: The Airline's Objectives” (1996) 21 AIR & SPACE L. at 166.

Margo Rod D., “Aspects of Insurance in Aviation Finance” (1996) 62:2 J Air L & Com at 423.

McNutt, Marcia “EDITORIAL: The hunt for MH370” (2014) 344:6187 Science at 947.

Mechanic, David. “Establishing Mental Health Priorities.” (1994) 72:3 *The Milbank Quarterly* at 501–14.

Mendelsohn Allan I. & Carlos J. Ruiz, “The United States vs. France: Article 33 of the Montreal Convention and the Doctrine of Forum Non Conveniens” (2012) 77 J Air L & Com 467.

Mendes de Leon Pablo, Werner Eyskens, “The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System” (2001) 66:3 J Air L & Com 1155.

Mendes de Leon Pablo, Werner Eyskens, “The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System” (2001) 66:3 J Air L & Com 1185.

Mendes de Leon Pablo, Werner Eyskens, “The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System” (2001) 66:3 J Air L & Com 1155.

Milde Michael, “ICAO Work on the Modernization of the Warsaw System” (1989) *AL* 193.

Milde Michael, *International Air Law and ICAO*, 3<sup>rd</sup> ed. (The Hague: Eleven Pub., 2016).

Milde Michael, *The Problems of Liabilities in International Carriage by Air* 62 (Caroline Univ.1963).

Miller Georgette, *Liability in International Air Transport – The Warsaw System in Municipal Courts* (Deventer: Kluwer Law, 1977) at 337.

Oliver Nick, Thomas Calvard, and Kristina Potočnik (2017) “The Tragic Crash of Flight AF447 Shows the Unlikely but Catastrophic Consequences of Automation”, *Harvard Bus Rev* online at <[hbr.org/2017/09/the-tragic-crash-of-flight-af447-shows-the-unlikely-but-catastrophic-consequences-of-automation](http://hbr.org/2017/09/the-tragic-crash-of-flight-af447-shows-the-unlikely-but-catastrophic-consequences-of-automation)>.

Ravage Maurice, Benjamin H. Siff & Stuart M. Speiser, “Report on the Warsaw Convention as Amended by the Hague Protocol” (1959) 26:3 *J Air L & Com* 255.

Reese Willis L.M., “The Law Covering Airplane Accidents” (1982) 39 *Wash & Lee L. Rev.* 1303.

Sand Peter H., “Limitation of Liability and Passengers’ Accident Compensation under the Warsaw Convention” (1962) 11:1 *Am J Comp L* 21 at 29.

Schladebach Marcus, “The Germanwings Disaster: Legal Debates and Consequences” (2016) 59 *German YB Int’l L* 603; An interesting storytelling is offered online <[admiralcloudberg.medium.com/the-madness-in-our-methods-the-crash-of-germanwings-flight-9525-and-our-broken-aeromedical-system-5b95abd4fe6d](https://admiralcloudberg.medium.com/the-madness-in-our-methods-the-crash-of-germanwings-flight-9525-and-our-broken-aeromedical-system-5b95abd4fe6d)>.

Shubert Francis, “Legal Barriers to a Safety Culture in Aviation” (2004) *XXIX Annals of Air & Space L.* 19 at 25.

Silets, [1987] *JALC*, 333.

Weber Ludwig ‘International Civil Aviation Organization (ICAO)’ (Wolters Kluwer 2017).

## INTERNATIONAL CONVENTIONS

1944 Chicago Convention, *Convention on International Civil Aviation*, Chicago, December 7, 1944 (15 U.N.T.S. 295) (entered into force on April 4, 1947);

*Convention for the Unification of certain Rules for International Carriage by Air*, Montreal, May 28, 1999, 2242 UNTS 309 (entered into force on November 4, 2003);

*Convention for the Unification of certain Rules relating to International Carriage by Air*, Warsaw, October 12, 1929, 137 LNTS 11 (entered into force on February 13, 1933) [hereinafter: 1929 Warsaw Convention or Warsaw Convention of 1929];

ICAO Legal Committee, Report on the revision of the Warsaw Convention, ICAO International Conference on Private Air Law, The Hague, September 1955, Vol. 2, at 93, ICAO Doc. 7686 – LC/140 (1956), Vol. I: Minutes and Vol. II: Documents.

## EUROPEAN UNION SECONDARY SOURCES

- *Decision 2001/539/EC of 5 April 2001*, [2001] OJ L 194/38.
- European Union, *Commission Delegated Regulation (EU) 2020/1118 of 27 April 2020 amending Regulation (EC) No 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators*, OJEU, L 243/1.
- Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (Text with EEA relevance)
- *Regulation (EC) No 889/2002 of 13 May 2002*, [2002] OJ L 140/2.
- Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council

- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJEU L119/1.

## U.S. LAW

- Health Insurance Portability and Accountability Act (HIPPA), Pub. L. No. 104-191 (1996).
- Mental Health Parity and Addiction equity Act 2008 (MHPAEA) (Pub L No. 111-148).

## CASE LAW

*[ISRAEL] Daddon v Air France* (1984) 1 S & B Av R V11/141.

[SPAIN] Audiencia Provincial Madrid, February 1, 2008, [2008] ECLI:ES:APM:2008:10106.

[UK] *KLM Royal Dutch Airlines v Morris* [2001] EWCA Civ 790.

[UK] *Deep Vein Thrombosis and Air Travel Group Litigation* [2005] UKHL 72.

[UK] *King v Bristow Helicopters Ltd. (Scotland)*, [2002] UKHL 7.

*Abnett v British Airways Plc (Scotland)* [1996], UKHL 5.

*Air France v Saks*, 470 US 392 (1985).

*Block v. Compagnie Nationale Air France*, 386 F.2d 323 (CA5 1967), cert. denied, 392 U.S. 905, 88 S.Ct. 2053, 20 L.Ed.2d 1363 (1968).

*Burnett v Trans World Airlines, Inc.*, 368 F. Supp. 1152 (D.N.M. 1973).

CA Nouméa, January 21, 2014, No. 13/00203; CA Nîmes, October 8, 2015, No. 14/05008.

CA Rennes, 5e chambre, October 12, 2011, No. 10/04423; CA Paris, pôle 1, ch. 3, July 9, 2013, No. 12/22329.

Cass 1<sup>re</sup> civ, December 6, 1988, [1988] Bull civ I 349, No. 87-15.168; Cass 1<sup>re</sup> civ, January 15, 2014, [2014] Bull civ I 6, No. 11-21.394.

Cass 1<sup>re</sup> civ, January 15, 2014, Bull civ I 7, No. 11-27.962; CA Paris, pôle 1, ch 2, February 12, 2015, No. 14/02471.

Cass 1<sup>re</sup> civ, November 29, 1989, [1989] Bull civ I 373, No. 88-13.772.

Cass civ 1<sup>re</sup>, December 7, 2011, [2011] Bull civ I 210, No. 10-30.919.

CJEU, *BT v Laudamotion GmbH*, Case C-111/21, [2022] ECLI:EU:C:2022:808 [*BT v Laudamotion GmbH*].

CJEU, *GN v ZU*, Case C-532/18, [2019] ECLI:EU:C:2019:1127.

CJEU, *JR v Austrian Airlines AG*, Case C-589/20, [2022] ECLI:EU:C:2022:424.

*Day v. Trans World Airlines, Inc.*, 528 F.2d 31 (CA2 1975) (en banc) (same), cert. denied, 429 U.S. 890, 97 S.Ct. 246, 50 L.Ed.2d 172 (1976).

*Deep Vein Thrombosis and Air Travel Group Litigation* [2005] UKHL 72.

*Doe v. Ethiad Airways*, 870 F.3d 406 (6th Cir. 2017).

*Eastern Airlines, Inc. v. Floyd* (1991), 499 U.S. 530 (1991).



*Evangelinos v. Trans World Airlines, Inc.*, 550 F.2d 152 (CA3 1977) (en banc) (terrorist attack).

*Gottlieb v. Yugoslav Airlines* – 22 Civ. 4285, Mem., US District Court (SDNY), 1973.

*Grueff v Virgin Australia Airlines Pty Ltd*, [2021] FCA 501.

*Hinds v. Philippine Airlines* – 15 Avi 17, 701, US District Court (SDNY), 1979.

*Hosaka v. United Airlines Inc.*, 305 F.3d 989 (9th Cir. 2002).

*In Re Air Crash Disaster at Taipei, Taiwan*, 219 F. Supp. 2d 1069 (C.D. Cal. 2002).

*Kasanof v. Embry-Riddle Co.*, 157 Fla. 677, 26 So.2d 889 (1946).

*King v Bristow Helicopters Ltd. (Scotland)*, [2002] UKHL 7.

*KLM Royal Dutch Airlines v Morris* [2001] EWCA Civ 790.

*Krystal v. British Overseas Airways Corp.*, 403 F.Supp. 1322 (CD Cal.1975) (hijacking).

*Kwasi v. KLM* – 24 Avi 17, 451, US District Court (DC), 1993.

*Landress v. Phoenix Mutual Life Ins. Co.*, 291 U.S. 491, 54 S.Ct. 461, 78 L.Ed. 934 (1934).

*McLoughlin v O'Brian*, UKHL J0506-3 (1982).

*Morris v KLM Royal Dutch Airlines*, [2002] UKHL 7.

*Oliver v. Scandinavian Airlines System*, 17 CCH Av.Cas. 18,283 (Md.1983) (drunken passenger falls and injures fellow passenger).

*Olympic Airways v Hussain*, 541 U.S. 1007, 124 S.Ct. 2065 (2004).

Opinion of AG Emiliou delivered on January 20, 2022 on the Case C-589/20, ECLI:EU:C:2022:47.

*Order Granting Defendants' Motion to Dismiss on Grounds of Forum Non Conveniens at 15, In re West Caribbean Airways*, 619 F. Supp. 2d 1299 (No. 06-22748-CIV).

*Order on Motion to Vacate, In re West Caribbean Airways*, No. 06-22748-CIV (S.D. Fla. May 16, 2012), 2012 WL 1884684.

*Pel-Air Aviation Pty Ltd v Casey* [2015] NSWSCC 566.

*Piper Aircraft Co. v Reyno*, 454 US 235 (1981); *Trivelloni-Lorenzi v Pan Am*, 821 F.2d 1147, 1168 (5<sup>th</sup> Cir. 1987).

*Plourde v Service Aérien FBO Inc (Skysservice)*, 2007 QCCA 739.

*Reed v. Wiser*, 555 F.2d 1079 (CA2), cert. denied, 434 U.S. 922, 98 S.Ct. 399, 54 L.Ed.2d 279 (1977).

*Res ipsa loquitur* was successfully alleged in *Colmenares Vivas v. Sun Alliance Insurance Company* (807 F.2d 1102 (1st Cir. 1986).

*Rosman v. Trans World Airlines, Inc.*, 34 N.Y.2d 385, 394, 358 N.Y.S.2d 97, 102, 314 N.E.2d 848, 853 (1974).

*Scarborough v. Aeroservice*, 155 Neb. 749, 53 N.W.2d 902 (1952).

*Sidhu v. British Airways* [1997] UKHL J1212-5.

*Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311, 316 (1928).

*Thibodeau c. Air Canada*, [2014] 3 RCS 340.

*Weaver v Delta Airlines*, 56 F Supp 2d 1190 (1999); *In re Air Crash at Little Rock, Arkansas*, 118 F Supp 2d 916 (2000).

*Zicherman v. Korean Air Lines Co.*, 84 F.3d 446, 318 U.S.App. D.C. 6 (1996).

## ICAO DOCUMENTS

ICAO Assistance to Aircraft Accident Victims and Their Families (AAAVF), Instructor-led training, online <[store.icao.int/en/aircraft-accident-victims-assistance-training](https://store.icao.int/en/aircraft-accident-victims-assistance-training)>.

ICAO Doc. 8584 – LC/154-1, 154-2 (1966).

ICAO Report, AAAVF2021, 1 to 3 December 2021 at 1.3.9.

ICAO-Legal-Committee, 17th Sess., Montreal, ICAO Doc. 8878 – LC/162, at 364 (0701). II. Conférence Internationale de Droit Privé Aérien, 4 at 12 Oct. 1929, Warsaw 1930, procès verbaux.

ICAO, 38<sup>th</sup> Assembly, A38-WP/301 and Corrigendum No. 1, Assistance to Aircraft Accident Victims and their Families. Amend Annex 9 as follows: 8.45 Recommended Practice “*States should establish legislation, regulations and/or policies in support of aircraft accident victims and their families*”.

ICAO, Annex 9 – Facilitation, available at <[elibrary.icao.int/product/256255](https://elibrary.icao.int/product/256255)>.

ICAO, Facilitation Panel, WP/24, February-March 2024, Montreal.

ICAO, Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973) available at <[www.icao.int/SAM/Documents/2016-AIG-RECORDSPRO/Doc%209973.Family%20Assistance\\_en.pdf](http://www.icao.int/SAM/Documents/2016-AIG-RECORDSPRO/Doc%209973.Family%20Assistance_en.pdf)>.

ICAO, Policy on Assistance to Aircraft Accident Victims and their Families (Doc 9998) available at <[www.icao.int/WACAF/Documents/Meetings/2015/ICAO-BEA/9998\\_cons\\_fr.pdf#search=doc%209998](http://www.icao.int/WACAF/Documents/Meetings/2015/ICAO-BEA/9998_cons_fr.pdf#search=doc%209998)>.

## **OTHER**

3rd Annual National Institute on Aviation Litigation (Chicago: American Bar Association., 2017).

Chicago Convention Annex 13: Aircraft Accident and Incident Investigation, Ch. 1: Definitions, “Causes”. Annex 13 addresses two broad categories of events — “accidents” and “incidents” — and one subcategory, “serious incidents”.

“Court upholds Skyguide compensation: Skyguide did offer appropriate compensation to the families of the 71 victims of the 2002 air collision over Überlingen in Germany, the Swiss Federal Court has ruled.” (2011) [swissinfo.ch](http://swissinfo.ch/eng/life-aging/court-upholds-skyguide-compensation/30259716), available at <[swissinfo.ch/eng/life-aging/court-upholds-skyguide-compensation/30259716](http://swissinfo.ch/eng/life-aging/court-upholds-skyguide-compensation/30259716)>.

“Crisis Communications Case Study - Background Material, Malaysia Airlines Incident (Flight MH 370 - KUL to PEK)”, [Aviationemergencyresponseplan](http://aviationemergencyresponseplan.com), 08 March 2014.

“Deadline to Sue”, Today, 30 October 2002 at 12 online <[eresources.nlb.gov.sg/newspapers/digitised/article/today20021030-2.2.16.4](http://eresources.nlb.gov.sg/newspapers/digitised/article/today20021030-2.2.16.4)>.

BBC News (2017) “Germanwings crash: What happened in the final 30 minutes” available at <[bbc.com/news/world-europe-32072218](http://bbc.com/news/world-europe-32072218)>.

Bott, Martin; Paterson, Tony "Father of air-crash victims guilty of revenge killing" (2005) The Independent, Independent Digital News & Media.

Document C-WP/10613 of 2 Jun. 1997.

Harding, Luke, Paton Walsh, Nick "Nothing left to lose: grief-crazed murder suspect haunted by family's air deaths" (2004) The Guardian, London.

IFALPA, Pilot Assistance Program, Available at <[ifalpa.org/media/3841/pilot-assistance-manual-2022.pdf](http://ifalpa.org/media/3841/pilot-assistance-manual-2022.pdf)>.

International Air Transport Association (IATA), Aircraft Recovery Strategic Partnership program, available at <[iata.org/en/about/sp/areas/aircraft-recovery-strategic-partnerships-program/](http://iata.org/en/about/sp/areas/aircraft-recovery-strategic-partnerships-program/)>.

International Civil Aviation Organization (ICAO) Working Paper A39-WP106, 12 August 2016.

Karamjit Kaur, "2 Cabin Crew Get Payouts as SIA Settles Last SQ006 Lawsuits in S'pore," The Straits Times, 17 October 2006, 1.

Pauline Leong, "SIA May Face Massive Lawsuits," (7 November 2000) The Straits Times.

Pilar Vera Palmés, "Past, Present and Future: 75 years Enabling Air Transport" (2024) online <[aircrashvictims.com/wp-content/pdf/240517\\_ACVFFI\\_PPoint\\_FAL24\\_EN.pdf](http://aircrashvictims.com/wp-content/pdf/240517_ACVFFI_PPoint_FAL24_EN.pdf)>.

Rafael Vidal, Survivor of the JK5022 flight (Madrid – Gran Canarias 2008). 154 casualties, 18 survivors; online <[aircrashvictims.com/wp-content/uploads/2023/06/211201\\_RVidal\\_AAASF21.pdf](http://aircrashvictims.com/wp-content/uploads/2023/06/211201_RVidal_AAASF21.pdf)>.

Riese, [1956] *ZLR*, 33.

Salvatore Sciacchitano, ICAO Council President, addressing the *International Day Commemorating Air Crash Victims and their Families*, (20 February 2024) resource available <[icao.int/Newsroom/Pages/Enhancing-support-for-air-crash-victims-and-their-families.aspx](http://icao.int/Newsroom/Pages/Enhancing-support-for-air-crash-victims-and-their-families.aspx)>.

Scott Brooksby & Brian J. Alexander, "What Can Be Done about Pilot Depression, Suicide, and Other Flight Crew Mental Health Issues" [2018] 16:2 Mass Torts Litig 12.

Skyguide and other air traffic control organizations adopted more stringent safety protocols and operational procedures <[nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/](http://nbaa.org/aircraft-operations/communications-navigation-surveillance-cns/tcas/)>

The Straits Times, "We're Deeply Sorry" (2 November 2000) at 6; The Straits Times, "Quick Move into Crisis Control" (2 November 2000).

Traffic Collision Avoidance System (TCAS) and the response of the air traffic controller. Online at <[faa.gov/documentLibrary/media/Advisory\\_Circular/TCAS%20II%20V7.1%20Intro%20booklet.pdf](http://faa.gov/documentLibrary/media/Advisory_Circular/TCAS%20II%20V7.1%20Intro%20booklet.pdf)>).