Jurisprudential Approach of the Aircraft Liability according to International and EU Rules

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Abstract: The present work is on the analysis of carrier's responsibility legislation according to EU law in comparison with the rules of international law and the evolution of the jurisprudential orientation of the Court of justice of the European Union in air transport in the sector of carrier's liability, damages for non-fulfillment and delay, overbooking and, loss of baggage. What are the rules of responsibility? the basis of the requested compensation? are some of the elements of research and response through EU jurisprudence according to international legislation of recent years.

Keywords: Aircraft liability; Reg. 285/2010; Montreal Convention of 1999; EU law; CJEU; psychic damage; delay

1. From The Hague Protocol of 1955 to Montreal Convention of 1999 and Regulation n. 285/2010

The air carrier liability regime has been regulated, from 1929 to today, by a vast and substantial regulatory production, which undoubtedly focuses on two Conventions of Warsaw and Montreal, dated 1929 and 1999 respectively, but which finds further important references in a series of regulations which, from time to time, dealt with particular aspects of the legislation in question. The evolution of the uniform legal discipline of air transport, beyond the many unilateral ferment and various initiatives, went back in its essential lines to an era in which the phenomenon that was called to regulate was still going through its pioneering phase.

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Even before the Montreal Convention of 1999 (Fearon, 1999, pp. 401ss), was reached, the basic lines of the discipline of damage for death and injury of passengers in air transport (Rodiere, 1990)-which represent it, due to the relevance of interests at stake and of resulting effects in terms of compensation obligations, a topic of extreme importance-have been traced, at European level, by EC Regulation n. 2027/97 of the Council of 9 October 1997 on the liability of the air carrier in the event of accidents involving damage to the passenger (Giorgetti, 2012; Benyon, 2013, pp. 22ss)[1].

Subsequently, with the revision of EC Regulation n. 2027/97 (Giemulla, Schmid, 1998, pp. 98 ss; Field, 2005, pp. 70ss; Gand, 1962, pp. 24ss; Lee, 2015, pp. 250ss. Havel, Sanchez, 2014, pp. 23ss; Leloudas, 2013)[2] by EC Regulation n. 889/2002, a further regulatory evolution was implemented by a regime in which the uniform right-dictated by the Warsaw Convention of 1929 (Grönfors, 1956, pp. 120ss), whose scope of application was limited only to "international" air transport (Soames, Goeteyn, Camesasca, 2004, pp. 115ss; Sanchez, Havel, 2014) as defined by art. 1 of the same Convention - alongside the internal law of single states, a very different system- "introduced" by provisions of the aforementioned EC Regulation n. 889/2002[3], which extends the application of uniform law provisions (and, specifically, those dictated by the Montreal Convention "with regard to the air transport of passengers and their baggage" to transports carried out in a single member state[4].

Wishing to briefly review international regulations on aeronautics that have

[1]Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, OJ L 285, 17.10.1997, p. 1-3 . CJEU, C-301/08, I. Bogiatzi v. Deutscher Luftpool and others of 22 October 2009, ECLI:EU:C:2009:649, I-10185. The sentence was based on the Council Regulation of 9 October 1997, n. 2027 on the liability of the air carrier in the event of accidents in relation to the four additional Montreal protocols of 25 September 1975 and the art. 29 of the Warsaw Convention for liability of the air carrier. In the same of orientation also the case: C-258/16, Finnair of 13 April 2018, ECLI:EU:C:2018:252, published in the electronic Reports of the cases.

[2]See, Williamson v. Pacific Greyhound Lines, 1945, 67 Cal. App. 2d 250, 153 P.2d 990; Webber v. Herkimer & M. St. R. Co., 1888, 109 N.Y. 311, 16 N.E. 358; Herron v. Miller, 1923, 96 Okl. 59, 220 P. 36; Baltimore City Passenger R. Co. v. Kemp, 1883, 61 Md 619. Turner v. Stallibrass, 1898, 1 Q.B. 56; Sumsion v. Streator Smith, Inc., 1943, 103 Utah 44, 132 P.2d 680; Ellis v. Taylor, 1931, 172 Ga. 830, 159 S.E. 266; Quaker Worsted Mills Corp. v. Howard Trucking Corp., 1938, 131 Pa. Super. 1, 198 A. 691.

[3]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) OJ L 140, 30.5.2002, p. 2-5.

[4]The Montreal Convention concluded on 28 May 2009 was signed by the European Community on 9 December 1999 and approved in its name by Council Decision 2001/509/EC of 5 April 2001.

occurred over time, it is noted that the 1929 Warsaw Convention was already the subject of an amendment, through a series of protocols that had alternate results: from the Hague Protocol of 28 September 1995, to the Guatemala City Protocol of 8 March 1971, up to the four Montreal Protocols of 25 September 1975, including that of Guatemala City in 1971 and of Montreal no. 3 have never entered into force. The Warsaw Convention regime was then supplemented by a complementary Convention of Guadalajara of 1961 (Le Goff, 1963, pp. 20ss; Von Röhl, 1938) on air transport performed by a subject other than the contractual carrier, which, however, was not ratified by the United States of America.

Apart from the aforementioned Protocols that have modified certain aspects of it, the 1929 Warsaw Convention is based on the regulation of documentation of the transport contract and on that of the vectorial liability for death and injuries suffered by the passenger, for damage or loss of goods and baggage delivered due to delay, providing, at least in its original text, the "billet du passage" for passenger transport, the "bullettin de bagages" for the transport of baggage and the "lettre de transport aérien" for transport of goods. The omitted or irregular issuance of such documents entailed the carrier's forfeiture of the benefit of the release document and the compensation limit for which the carrier could avail himself (Chassot, 2012).

The liability regime dictated by the Warsaw Convention focused on a principle of liability for fault of the carrier, who, "appealing" to the facts constituting the responsibility provided for by articles 17, 18, 19 of the same Convention, he was admitted to give the liberating evidence of having operated according to canons of good carrier, or of having taken all the necessary measures to avoid the damage, or, again, not to have been able to adopt them. With regard to the transport of goods, the Convention also provided for the possibility for the carrier to exempt itself from liability by providing proof that the damage was derived exclusively from "faute de pilotage, de conduite de l'Aeronef ou de navigation", and this under the provision of art. 20, subparagraph 2, of the original Convention text[1], subsequently repealed by art. X of the Hague Amendment Protocol of 1955 (Giemulla, Schmid, Mölls, 1992. Giemulla, Weber, 2011; Stephen Dempsey, Jakhu, 2016; Walulik, 2016; Giemulla, Weber, 2011).

[1]See in particular from the CJEU the next cases: C-299/18, Neldner of 22 August 2018, ECLI:EU:C:2018:706; C-656/18, F. of 7 November 2018, ECLI:EU:C:2018:924, C-566/18, Austrian airlines of 11 January 2019, ECLI:EU:C:2019:71: C-557/18, Eurowings of 8 November 2018, ECLI:EU:C:2018:950, all the cited cases published in the electronic Reports of the cases.

With reference to the various types of damage covered by the Convention in articles 17, 18, 19, and art. 24 affirms the inviolability of limits and criteria of imputation of responsibility, regardless of the title on the basis of which the action was carried out, in order to prevent the injured-at least in legal systems that admit the accumulation of the action with that contractual- can obtain a result more favorable to him than that provided for by the Convention.

The Hague Protocol dating back to 1955, although not distorting the general layout of the 1929 Warsaw Convention, adopted a different formulation of the cases of forfeiture of the benefit of the term, and furthermore doubled the limits for damage to people. With reference to the first aspect, he foresaw the impossibility of the carrier to avail itself of the benefit of the limit in the event that the documentation of the transport contract does not explicitly recall the applicability of the uniform law regime and limits provided therein; this clause was aimed at guaranteeing the user of the transport the effective knowledge of liability regime applicable to the transport itself, thus allowing him to make a declaration of value for goods and baggage and/or to protect himself with insurance instruments[1].

Moreover, with reference to the conduct of the carrier suitable to determine the forfeiture of the benefit of the limit, the Hague Protocol reformulated art. 25 of the Warsaw Convention, providing for the possibility that the compensation limits could be crossed if the damage had been caused: “d'un act ou d'une omission” of the carrier or its employees and persons in charge in the performance of their duties, committed with the will to cause harm or, in any case, with the awareness: “qu'un dommage en résultera probablement”. The recourse to this notion, however, has given rise to two different interpretations of the law; the one, objective, which considered the conduct of the carrier and the provost to be rash and aware that it diverged from a standard parameter of knowledge and conduct that was legitimate to expect from a diligent carrier and person in charge; the other, subjective, which required a reference to concrete and effective representation of the reality matured by the acting subject (carrier or person in charge) and which, evidently, imposed on the injured party a much heavier probative burden.

[1]Consider, moreover, that already in the validity of the unmodified text of the Warsaw Convention, the US jurisprudence had opportunely excluded-with orientation that, probably, making use of the “juridical categories” in force in our current normative panorama, was inspired by the concept of “Unfair terms” -the applicability of these limits in cases where the transport conditions were referred to in the ticket in such small characters as to be unintelligible; this interpretative solution was then endorsed also by other jurisdictions, even if some US jurisprudence of the nineties has “backtracked” on the point.

Article. XIV of the Protocol in question also introduced an art. 25 A of the Warsaw Convention, which aimed to expressly extend the limits and exemptions of responsibility in favor of the employees and supervisors who had acted in the exercise of their functions, and therefore in the absence of conduct aimed at causing damage, or in any case "stained" by the knowledge that damage could result from them; in fact, in the absence of such an incident, the employees and persons in charge of the maritime carrier of goods could not avail themselves of the same exceptions and limitations as the carrier could use.

A significant source of novelty was made to the text of the Warsaw Convention by the Guadalajara Convention of 1961, which extended to the "de facto carrier", for the route taken from it, the regulation of vectorial liability, allowing this carrier to make use of limitations and causes of exemption from liability provided for in the Warsaw Convention.

With the Guadalajara Convention, as mentioned, the vectorial liability regime introduced by the Warsaw Convention has been extended to the de facto carrier, of course for the route taken from it, and, in any case, without prejudice to the "joint" responsibility of the contractual carrier for deeds and omissions of the de facto carrier and its supervisors[1].

In essence, the passive legitimization of the vectorial liability actions exercised by the user damaged by air transport must be identified, alternatively or cumulatively depending on the choice made by the plaintiff, both for the contractual carrier and actual carrier. This is prima facie an element of significant novelty and relevance in the regulatory landscape of international transport, only considering that the Guadalajara Convention was the first uniform text to give the transport user the right to act, at its own discretion, both towards the contractual and de facto carrier;

[1]The Guadalajara Convention found a sufficient number of accessions and ratifications to guarantee its entry into force; however, it was not ratified by the United States of America, whose common law regulatory system, based on juridical principles completely different from those in force in continental legislation, required a clarification in terms of identifying the carrier subject to the provisions of the Convention of Warsaw. And in fact, precisely because of the different legal characterization of common law systems compared to civil law systems, the fact that the Warsaw Convention did not provide a notion of "transporteur" posed problems of interpretation also in relation to the nature of the action for damages. suffered by the passenger, and the consequent passive legitimization of such action, in the event that the transport was performed by a subject other than the contractual entity. The "quid iuris" stood in relation to the different way of conceiving the action against the carrier in continental law systems-in which it is understood as a contractual action, with the consequent affirmation of the passive legitimacy of the subject who is required to perform the contract the transport-in comparison to those of common law, in which the legitimacy.

on closer inspection, however, the innovative scope of the principle of extending liability to the de facto carrier introduced by the Guadalajara Convention could be - at least for legal systems that admit action by the injured against carrier's préposés - less substantial than it can appear at a first examination, considering that the carrier in fact may well be qualified as preposè of the contractual carrier and that, moreover, the carrier to which the 1929 Warsaw Convention refers appears to be what is called "transporteur contractuel"[1] art. 1, lett. b, of Guadalajara Convention[2]. And in fact, since the carrier replies, in any case, of the facts of its préposés, it is necessary to consider that these, in turn, can benefit from the same limitations as the carrier might use, and this due to the provision introduced in art. 25 A of the Warsaw Convention from the Hague Protocol of 1955.

The system introduced by the Warsaw Convention began to "falter" during the 1960s, when the high uniformity of the legislation governing international air transport gradually deteriorated. This "ferment" probably finds its origin in the American "denunciation" of the Warsaw Convention dating back to 1965, motivated by the deemed need to raise compensation limits in the event of death or damage to the safety of passengers, and subsequently withdrawn by the United States only following the Montreal Agreement of 13.5.1966, signed between the airlines operating in the United States and the Civil Aeronautical Board. This agreement (Milde, 1989; Mendelsohn, 1967, pp. 497ss; Cheng, 2017, pp. 671ss)[3] constituted the starting point of a series of interventions implemented on compensation limits with unilateral initiatives, especially from those socially and economically more advanced states, in which the protection of primary values such as life and safety of passengers was felt as a priority. On the contrary, the Protocols of amendment of the Warsaw Convention aimed at bringing significant innovative ideas to the compensatory discipline dictated by the Warsaw Convention found

[1]Defined, under letter c of the art. I, "transporteur de fait", that is, a subject that is also different from the contractual carrier who, on behalf of this, has fully or partially assumed the execution of international air transport.

[2]This was the first uniform text that expressly provided the user with the possibility to take action against whoever actually performed the contractual obligation, or part of it, and in spite of the fact that in principle no prohibition could be traced for the person who is obliged to transfer people or things, to replace others in the performance of the service. The regulatory gap could lead to considerable disparities in treatment for both passengers and carriers: if in civil law systems the action tends to be conceived on the contractual level, with consequent passive legitimation of the subject contractually required to execute the obligation, in common law systems we move towards a tort action perspective, to be addressed against the person who has physically carried out the transport.

[3]classified from the author as: "a private agreement on a particular interpretation of the Warsaw Convention".

little success with ratifications and accessions.

Incidentally, it seems interesting to recall, with reference to the national context, that the Constitutional Court, with the sentence n. 132 of 1985, declared the constitutional illegitimacy of the provisions that had introduced the Warsaw Convention and the Hague Protocol into our regulatory system, since the compensation limits provided for by these uniform legal texts for the damage caused by the carriers to the person of passengers were considered inadequate with respect to goods of primary and constitutional status such as life and health, and also because of the fact that, in any case, no guarantees were offered in terms of certainty of compensation. Following this ruling, therefore, Italy called itself outside the regime of application of the Warsaw Convention, to which it was subjected again after the approval of law n. 274, 1988, whose art. 2 reintroduced the possibility for the air carrier of persons to avail themselves of the compensation limit.

As mentioned above, the problem of raising compensation limits was felt with greater urgency and priority in the most economically advanced countries, which attributed less importance to that, closely connected to it, of the proportional increase in insurance costs for carriers, and the consequent effects on tariffs from the same applied for the air transports[1]. In any case, even the most "defensive"

[1] In the Community context, the definitive consecration of the "need to guarantee a minimum adequate insurance level to cover the liability of air carriers in relation to passengers, baggage, goods and third parties" aimed at a more incisive consumer protection has been sanctioned by the adoption by the European Parliament and Council of the EC Regulation n. 785/2004 with which, in recital 24, the greater efficacy of a wide-ranging synergic action was explicitly recognized, highlighting that "since the objectives of this Regulation, namely the establishment of minimum insurance requirements that can contribute to the achieving the objectives of the internal air transport market by reducing distortions of competition, cannot be sufficiently achieved by Member States and can therefore be better achieved at Community level, the Community can intervene on the basis of the principle of subsidiarity as set out in Article 5 of the Treaty (…) ". See also from the CJEU: C-487/12, Vueling Airlines SA v. Instituto Galego de Consumo de la Xunta de Galicia of 18 September 2014, published in the electronic reports of the cases. We also take into consideration the general conclusions of Advocate General Y. Bot of 23 January 2014 concerning the sentence just mentioned where he stated that: "(...) that freedom with regard to tariffs does not apply to the tariffs applicable to the charges air services that are part of a public service obligation, and this in accordance with Article 22, paragraph 1 of Regulation n. 1008/2008. This freedom does not apply even to the levies imposed by public authorities or airport managers, that is to say with regard to taxes, airport fees and supplements connected to safety or fuels, which, due to their nature, cannot be included in the free assessment of economic operators and that the EU legislator specifically and separately contemplates article 23, paragraph 1 of Regulation n. 1008/2008 (...) the legislator of the Union does not limit itself to taking into consideration: "(...) the price (...) that passengers must pay (...) for their own transport (...)". In fact, it explicitly refers to the prices linked to "remuneration (of the agency) and other

positions of compensation limits have cracked in the face of unilateral initiatives of individual carriers, which have constituted the most direct precedent of the interview agreements with which most of the airlines participating in the International Air Transport Association have renounced to make use of the limitations and, in part, also of the causes of exemption of responsibility provided for by the "Warsaw system".

The Agreement of 1966 was followed by the IATA Intercarrier Agreement on Passenger Liability stipulated in 1995 in Kuala Lumpur and implemented with the IATA Agreement on Measures to Implement the IATA Intercarrier Agreement -MIA of 1 February 1996, and subsequently the ATA Provisions Implementing the IATA Intercarrier Agreement to be included in Conditions of Carriage and Tariffs-IPA of 16 May 1996 (Clarke, Yates, 2016; Clarke, 2013; Bäckdėn, 2019).

What is certain is that the aforementioned unilateral initiatives of carriers have urged the International Civil Aviation Organization (ICAO) to reconsider the parameters of liability of the air carrier of persons, also in consideration of the fact that, as regards goods sector, in 1975, after a phase of absolute stasis in the situation of ratifications to the Warsaw Convention, the conditions had been created for the entry into force of the IV Montreal Protocol, which introduced significant changes both with reference to the documentation of transport, both with reference to the liability regime of the carrier. This Protocol was also ratified by the United States, which, however, also wished to change the criteria set by the Warsaw Convention in matters of jurisdiction, proposing that the four forums provided for by art. 28 was accompanied by an additional one linked to passenger's state of residence.

auxiliary services", which therefore goes well beyond the costs directly linked to the execution of air transport in the strict sense. In this regard, I do not believe that the notion of "auxiliary services", according to Article 2, point 18, of Regulation n. 1008/2008 it is necessary to connect the services proposed by the agencies (...) the legislator of the Union through the establishment of "common norms for the provision of air services in the Community" in accordance with the title of Regulation n. 1008/2008. Indeed, from recitals 2, 5 and 18 of this Regulation it is clear that the latter is intended to develop a more efficient, more uniform and more homogeneous application of the Union legislation for the internal aviation market, in such a way as to avoid distortions of competition deriving from the different application of the rules at national level, on the one hand, and allow consumers to be able to effectively compare prices for air services, and on the other (...) Article 22, paragraph 1 of Regulation (EC) n. 1008/2008 of the European Parliament and of the Council of 24 September 2008, laying down common rules for the provision of air services in the Community, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, the which prohibits air carriers from charging, as an optional price (...), the registration of the passenger's baggage (...) ".

Even in the face of the innovative momentum that was maturing within the I.C.A.O., the process of revising the "Warsaw system" (Mercer, 2003, pp. 147ss) was slow to produce concrete results, probably due to the problematic nature of identifying solutions on which all states concerned agreed.

The difficulty in giving birth to an organic revision of the Warsaw Convention led the European Council to adopt the EC Regulation n. 2027/97, aimed at regulating the liability of the air carrier in the event of accidents causing damage to passengers by passengers (Whalen, 2000, pp. 25ss. Jarvis, Straubel, 1994-1995, pp. 911ss.; Lyck, Dornic, 1997, pp. 20ss. Goldhirsch, 2004, pp. 275ss; Cobbs, 1999, pp. 123ss. Sisk, 1990, pp. 127ss; Desbiens, 1992, pp. 164ss. Goldhirsch, 2004, pp. 275ss. Bok Kim, 2001, pp. 289ss; De Gama, 2017)[1], and inspired by the pre-

[1]See, ex multis from the international jurisprudence: Olympic Airways v. Zacopoulos, Court of Appeals of Athens, January 21, 1974; Franklin Mint v. TWA, US Court of Appeals (2nd Circ.) September 28, 1982; TWA v. Franklin Mint, US Supreme Court, April 17, 1984, Air Law, Vol. IX,1984. In case: Grein v. Imperial Airways, Ltd, King's Bench Division 23 October 1935; Court of Appeals 13 July 1936, which is observed that:: "(...) all reasonable skill and care in taking all necessary measures to avoid damage (...)". In case: Hannover Trust Co. v. Alitalia Airlines, 14 Avi. 17.710 (A.D. N.Y. 1977), the court has declared that: "(...) all necessary measures really meant all reasonable measures (...)". In case: Chrisholm v. British European airways, 1. Lloyd's Rep. 626, Manchester Assisez, 1963, which is affirmed that: "(...) the passengers had been instructed to take their seats and fasten their seat belts because of air turbulence (...) it was sufficient that the air carrier proved that he had taken all reasonable care in warning the passengers, and thus the passenger's claim was denied (...)". See also in argument the next cases: Mertens v. Flying Tiger Line, Inc, 1965, A.Ct.., 341 F. 2D 851, 2d Cir. 1965; Warren v. Flying Tiger Line, 1965, A.Ct., 352 F. 2D 494; Lisi v. Alitalia-Linee Aeree Italiane, S.p.A., 1966 A.Ct., 370 F. 2D 508; Chan v. Korean Air Lines, 1989, 490 U.S. 122, 109 S.Ct. 1676. In the same spirit see also: American Airlines v. Ulen, 1949, A.Ct., 186 F. 2d 529, 87 U.S.App.D.C. 307; Piamba Cortes v. American Airlines, 1999, A. Ct., 177 F. 3d 1272; 1999 A.M. C. 2286; Fla. L. Weekly Fed. C 947; Republic Nat. Bank v. Eastern Airlines, Inc., 815 F.2d 232, 239, 2d Cir. 1987. M. MILDE, Warsaw Requiem or Unfinished symphony?, in The Aviation Quarterly, 1996, pp. 40ss. DeMarines v. KLM, 1978, A.Ct., 580 F.2d 1193; Air France v. Saks, 1985, 470 U.S. 392, 105 S.Ct. 1338, which is affirmed that: "(...) on what causes can be considered accidents and did not suggest that only one event could be the accident (...) any in jury is the product of a chain of causes (...) some link in the chain was an unusual or unexpected event external to the passenger (...) The issue we must decide is whether the "accident" condition precedent to air carrier liability under Article 17 is satisfied when the carrier s unusual and unexpected refusal to assist a passenger is a link in a chain of causation resulting in a passenger s pre-existing medical condition being aggravated by exposure to a normal condition in the aircraft cabin (...)". See also: Herman v. Trans World Airlines, 1972, 12 Avi. 17, 634, 1972, and 12 Avi. 17, 304; Husserl v. Swiss Air Transport Company, 1975, D.Ct.,388 F. Supp. 1238; Evangelinos v. TWA, 1977, A. Ct., 550 F.2d 152; Day v. TWA, 1975, A.Ct., 528 F.2d 31; Day v. TWA, 1975, A.Ct.; Air-Inter v. Sage Et A.l., Cour d'Appel de Lyon France, Feb. 10, 1976; Schoner's case law digest Air Law, Vol. II (1977), p. 229; MacDonald v. Air Canada, 1971, A.Ct., 439 F.2d 1402, which is affirmed that: "(...) find that in not advising passenger of the risk they assume, an airline may be negligent, but this negligence is not in itself an accident within the meaning of Article 17 in the sense that the D VT sustained by the plaintif! is not linked ta an unusual and unexpected event external ta him as a passenger (...)". Moses v. Air

Afrique, 2000, D.Ct., 2000 WL 306853, E.D.N.Y.; Abramson v. Japan Airlines Co., Ltd. 1984, A.Ct., 739 F.2d 130 (3d Cir. 1984, no. 83-57750); Dias v. Transbrasil Airlines, inc. 26 Avi., CCH, 16,048, S.D. N.Y. 13 October 1998; El Al Israel Airlines, Ldt. V. Tseng, 1999, S.Ct., 525 U.S. 155, 119 S.Ct. 662. Gal v. Northern Mountain Helicopters Inc., Dkt. No. 3491834918, 1998 B.C.T.C. Lexis 1351, British Columbia; Emery Air Freight Corp. V. Nerine Nurseries Ltd., 1997, 3 N.Z.L.R. 723, 735-736, New Zealand Court of Appeal; Seagate Technology Int'l v. Changi Int'l Airport Servs. Pte Ltd., 1997, 3 S.L.R. 1,9 (Singapore Court of Appeal); Craig v. Compagnie Nationale Air France, 1994, 45 F.3dd 435 (9th Circ. 1994); Capacchione v. Quantas Airways, 1996, 25 Avi. CCH, 17,346, C.D. Cal. 1996; Segurian v. Northwest Airlines (1982), 86 A.D.2d 658, 446 N.Y.S.2d 397, 2d Dep't, aff'd, 57 N.Y.2d 767, 454 N.Y.S.2d 991, 440 N.E.2d 1339; Krys v. Lufthansa German Airlines, 1997, 119 F.3d 1515; Price v. British Airways, No. 91 Civ. 4947 JFK, 1992 WL 170679, S.D.N.Y. 7 July 1992, 23 Avi 18,465; Barratt v. Trinidad & Tobago Airways Corp., No. CV 88-3945, 1990 WL 127590, E.D.N.Y. Aug. 28, 1990; Tsevas v. Delta Airlines, Inc., No. 97 C 0320, 1997 WL 767278, N.D. III. 1 December 1997; Wallace v. Korean Air, 1999, D.Ct., 1999 WL 187213, S.D.N.Y.; Wallace v. Korean Air, 2000, A.Ct., 214 F.3d 293; Rosman v. Trans World Airlines, 1974, N.Y.A.Ct., 34 N.Y.2d 385, 314 N.E.2d 848, 358 N.Y.S.2d 97. See also: Terrafranca v. Virgin Atlantic Airways, 1997, A.Ct., 151 F.3d 108; Alvarez v. American Airlines (2000) D.Ct., 2000 WL 145746, S.D.N.Y..Air France v. Saks 470 U.S. 392 (1985); Olympic Airways v. Husain, 124 S. Ct. 1221, 2004, which is stated that: "(...) When we interpret a treaty, we accord the judgments of our sister signatories considerable weight (...) It is reasonable to impute to the parties an intent that their respective courts strive to interpret the treaty constantly (...) Maintaining a coherent international body of treaty law requires us to give deference to the legal rules our treaty partners adopt. ft is not enough to avoid inconsistent decisions on factually identical cases (...)". El Al Israel Airlines v. Tseng, 525 u.s. 155, 1999; Dooley v. Korean Air Lines, 524 u.s. 116; Zicherman v. Korean Air Lines, 516 U.S. 217, 1996; Eastern Airlines v. Floyd, 499 U.S. 530, 1991; Chan v. Korean Air Lines, 490 u.s. 122, 1988; Trans World Airlines v. Franklin Mint Cor p., 466 u.s. 243, 1984; Demarines v. KLM Royal Dutch Airlines, 580 F2d 1193 (3rd Cir. 1978), the court has accepted that the incidence "(...) must be an unusual or unexpected event or happening (...)", as we can see in the case: Abramson v. Japan Airlines 739 F2d 130 (3rd Cir. 1984), the court has concluded that: "(...) the occurrence that allegedly aggravated plaintiff's condition was not an "accident" within the terms of Article 17 of the Warsaw Convention (...) The "accident" requirement of Article 17 is distinct from the defenses in Article 20(1), bath because it is located in a separate article and because if involves an inquiry into the nature of the event which caused the in jury rather than the care taken by the airline ta avert the injury (...) the question of wh ether a pre-existing infirmity aggravated by unusual, abnormal and unexpected flight operations would constitute an Article 17 accident even though if concluded that a pre-existing condition or sensitivity of the passenger aggravated by "usual, normal, and expected (...) usual, normal, and expected flight operations also left open a question with which subsequent courts have struggled-whether an accident can be deemed to exist when the in jury has nothing to do with flight or travel activity (...)". We continue with the next cases: Lonngadinos v. American Airlines. Inc" 199 E 3d68, 70-71(1 st Cir.2000); Gezzi v. British Airways, 991 E2d 603,604(9th Cir.1993); Tsevas v. Delta Air Lines, Inc., 1997 WL 767278 (N.D. III. Dec. 1, 1997); Stone v. Continental Airlines. Inc., 905 E Supp. 823 (D. Hawaii 1995); Curley v. American Airlines, Inc., 846 Esupp. 280, 283 (S.D.N.Y.I994); Price v. British Airways, 1992 WL 170679 at 2-3 (S.D.N.Y. July 7, 1992); Wallace v. Korean Air, 214 F.3d 293 (2od Ciro 2000) (Wallace); Curley v. American Airlines, Inc., 846 E Supp. 280,283 (S.D.N.Y.1994); Barratt v. Trinidad & Tobago (BWIA Int'l) Airways Corp., No. CV 88-3945, 1990 WL 127590 (E.D.N.Y. Aug. 28, 1990), which the Court has defined that: "(...) accident occurred here even under the narrower characteristic risk of air travel approach (...) she was cramped into a confined into a confidential space beside two men she did not know, one of whom turned out to be a sexual predator. The lights were turned down and the sexual predator was left unsupervised in the dark. ft was then that the attack occurred. In the Wallace Case, described the way that an air carrier could avoid the

eminent need to redefine the insufficient limitation of liability of the 1929 Convention, as amended by that of the Hague of 1955.

Returning to the Community regime, we can say that in the premises of Regulation 2027/1997 EU Council pointed out that: "(...) the maximum limit of liability set by the Warsaw Convention is too low compared to the current economic and social conditions and often leads to lengthy legal disputes that damage the image of air transport (...) ", and that for a long time had developed the profound need" for a complete review and revision of the Warsaw Convention" through a community action inspired by the principle of subsidiarity[1].

First of all, it is underlined that Regulation 2027/1997 was applied - except for voluntary submission - only to EU carriers, and was intended to regulate exclusively the liability regime for personal injuries, while transportation remained outside its scope of goods, as well as, as regards transport of persons, responsibility for loss or damage of baggage for damages due to delay and non-fulfillment.

With the Regulation in question, therefore, a series of supplementary provisions of the Warsaw Convention were introduced which provided, first of all, that Community air carrier responsibility: "for damages from death, injuries or any other personal injury suffered by a passenger in in the event of an incident"[2] was not subject to any financial limit, whether from a legislative or a contractual

liability interestingly (...) the standard (...) of the Second Circuit will impose liability for damage sustained in Warsaw Convention transportation unless the air carrier segregates passenger according to gender (same sex assaults remain problematic), seat female passengers in aisle seats only, hire sufficient cabin crew to be able to provide constant surveillance, eliminate closing of window shades during in-flight movies and fly with the interior lights illuminated at all times (...)". See also: Morris v. KLM (2002) UKHL 7, the Court has observed that: "(...) So long as if occurred during the time when the passenger was in the charge of the carrier, the passenger was entitled ta be compensated for ifs consequences if the carrier was not able ta discharge the burden posed by article 20 of showing that he and his servants and agents had taken ail necessary measures ta avoid the damage or that it was impossible for him or them ta take such measures Often a failure to act results in an accident, or forms part of a series of acts and omissions which together constitute an accident. In such circumstances it may not be easy to distinguish between acts and omissions (...) how inaction itself can ever properly be described as an accident. It is not an event; it is a non-event. Inaction is the antithesis of an accident (...)". In case: Povey v. Qantas Airways LTD (2005) High Court of Australia, the judge has noted that: "(...) It is hard to see how a failure to warn or advise passengers, a non-event as it were, can ever constitute an accident within the meaning of the article, notwithstanding the presence of surrounding circumstances which would make the failure unexpected or unusual (...)".

[1]CJEU, C-532/17, Wirth and others of 4 February 2018, ECLI:EU:C:2018:527, published in the electronic Reports of the cases.

[2]CJEU, C-195/17, Krüsemann and others of 17 April 2018, ECLI:EU:C:2018:258, published in the electronic Reports of the cases.

source; that being said, a double level of vectorial responsibility was traced, on the basis of which the carrier was excluded the faculty to avail itself of the liberating test for the claims for compensation up to an amount equal to the equivalent in ECU of 100,000 special drawing rights, with possibility of exemption from liability only in the light of the demonstration that the damage was caused by the negligence of the injured or deceased passenger; with regard to the claims for compensation exceeding this limit, the carrier was granted the possibility of invoking the recurrence of exemption clauses from liability contemplated by the Warsaw Convention (Andrews, Nase, 2011, pp. 3ss; Havel, Sanchez, 2016)[1]. The Regulation also obliged the Community air carrier to pay the damaged party without delay, or in any case within fifteen days of its identification, the payment, by way of advances, of those amounts which may be necessary to meet the most immediate economic needs arising from the left, thus giving a favorable solution to an issue that had aroused strong contrasts and divergences within the work of revising the "Warsaw system" (Verschoor, Diederiks, 2012).

This Regulation, however, has not decreed a total uniformity between the liability regimes of Community carriers, so much so as to make the subsequent adoption of EC Regulation no. 889/2002, with which, also due to the approval of the Montreal Convention of 1999, it was finally created, according to the point of view of the Community legislator, "a uniform system of responsibility for international air transport" (Balfour, Van Der Wijngaart, 2016, pp. 514ss; Grief, Losy, 2010-2011, pp. 529ss; Field, 2006, pp. 238ss; Cheng, 2004, pp. 834ss).

In the field of international air transport, a situation of coexistence has progressively been established between a plurality of disciplines and legislative texts on the liability of the air carrier. And in fact, already on the occasion of the Montreal Diplomatic Conference in 1975, the significant difficulty of bringing the discipline of air transport into a single text of uniform law was acknowledged, so much so that at the outcome of that Conference four protocols were approved amendment of the Warsaw Convention, the first three of which affected the compensation limits provided for in the original text of the Convention, the one

[1]The liability regime introduced by the Regulation in question infringed the "psychological threshold" of the limits of compensation, deriving from the deemed necessity of the airlines to be able to count in terms of costs the possible obligations for compensation deriving from the exercise of the company; as can also be seen in Regulation (EC) n. 1008/2008 of the European Parliament and of the Council of 24 September 2008 laying down common rules for the provision of air services in the Community (recast).

amended by the 1955 Protocol and the one amended by the 1971 Protocol, while the fourth also changed the carrier's responsibility for freight transport and the regime of transport documentation.

In the "common international conscience", therefore, the opinion had matured that the eventual conclusion of a new Protocol to amend the Warsaw Convention would have determined a further fragmentation of the matter, and this would certainly not have facilitated the process of strengthening the protection of the passenger who, in fact, has always inspired international legislator. The opinion thus matured that it would have been appropriate to prepare a new international air transport convention, intended to replace the previous, and by now very old, one of 1929, and to the large number of amendment protocols, as well as to include the discipline on liability of the de facto carrier as envisaged by the Guadalajara Convention of 1961 (Schmid, 2006, pp. 81ss; Kwon, 2016, pp. 99ss; Mirmina, 1996-1997, pp. 2ss; Grassi, 2014, pp. 55ss)[1].

Like the Warsaw Convention, the Montreal Convention applies exclusively to air transport that presents the requirements of internationality, as defined in art. 1 of the Convention, pursuant to which air transport cannot be considered international in which, although there is a flyover over a state other than that from which the air transport has begun and is terminated (De Gama, 2017), there is no stopover outside, or the call at all foreign countries have not been foreseen in any way, nor have they been wanted by the parties (Assis De Almeida, 2008). Furthermore, transport can be both onerous and free, as long as, in this case, it is carried out by an air transport company.

[1]It is reasonable to assume that the Montreal Convention has, at least in part, pursued this "summary" purpose, given that the Regulations subsequently approved in the Community context have only affected very sectorial aspects of the discipline, as was the case for Regulation n. 261/2004 which introduced, as will be seen below, common rules on compensation and assistance to passengers for denied boarding, flight cancellation or prolonged delay, as well as for Regulations 785/2004 and 285/2010 which have reformed the regulations the insurance requirements of air carriers. And indeed, Regulation 889/2002 was precisely inspired by the desire to extend and strengthen the effectiveness of the Montreal Convention, providing for the extension of its provisions also to national air transport. See also from the CJEU: C-321/11, G. C., M.-R. v. I., L. SA of 4 October 2012, ECLI:EU:C:2012:609, published in the electronic Reports of the cases. C-394/14, S. Siewert and others v. Condor Flugdienst GmbH of 21 November 2014, ECLI:EU:C:2014:2377, published in the electronic Reports of the cases. The Court stated that the company was not exonerated from its obligation to pay compensation to passengers due to the long delay of the flight and the event was inherent to the normal operation of the air carrier that was to compensate the passengers.

2. The Liability of International Air Carrier Pursuant to 1999 Montreal Convention and Community Regulations

Until the adoption of Regulation n. 889/2002 from the European Parliament and Council, therefore, the national air transports were not destined to fall within the ambit of application of the Montreal Convention of 1999, and remained disciplined by the Regulation 2027/97, where they were carried out transports from community carriers[1]. The Regulation provided for the abolition of compensation limit and resumed the two-tier system arising from the 1996 Miami Interprovectoral Agreement, for the first time also applied to internal flights; in the event of contributory negligence of the injured (Beale, Hartkamp, Kötz, Tallon, 1984, pp. 282; Twigg-Flesner, 2013)[2], the carrier was allowed to be exonerated, totally or partially, from its liability according to the applicable law, proving that the negligence of the injured or deceased passenger had caused the damage, or had contributed[3].

The Montreal Convention explicitly recognized the important contribution to unification of rules relating to international air transport offered by the 1929 Warsaw Convention and other "connected instruments", but considered it a priority to "adapt and recast" them in a single text, in order to "protect the interests of users of international air transport" and "guarantee fair compensation according to the principle of reparation"[4], in the belief that "the collective action of states aimed at further harmonization and codification of certain rules that regulate international air transport by means of a new Convention represents the most appropriate means of achieving the right balance of interests"[5].

[1]Pursuant to which "the carrier is not liable for damages pursuant to art. 17, paragraph 1, which exceed the 100,000 special drawing rights per passenger if he demonstrates that: a. the damage is not due to negligence, unlawful act or omission of one's own or employees or agents; b. the damage is due exclusively to negligence, unlawful act or omission of third parties.

[2]According to the jurisprudence see: Chan c. Korean Air Lines, Ltd.–U.S. Supreme Court 18 April 1989, which is affirmed that the Montreal Convention: "(...) is a private agreement among Airlain company, which cannot and does not purport to amend the Warsaw convention (...)".

[3]To exempt itself from liability, the carrier must prove: a) that the damage that has actually occurred (such damage) was not (was not two to) due to negligence or any other unlawful act or omission by the carrier or its servants or agents; b) that the same damage was due solely (was solely due to) the negligence or other unlawful act or omission of a third party.

[4]CJEU, C-302/16, Krijgsman of 11 May 2017, ECLI:EU:C:2017:359, published in the electronic Reports of the cases.

[5]See Distrect of Court of New York: Tobias Weiss and Gertrude O. Weiss, Plaintiffs, v. El al Israel Airlines ltd of 22 May 2006: "(...) the drafters of the Montreal Convention were aware of the difficulty in defining delay and were willing to leave the determination of what does and does not

The European Parliament and the Council adopted the Regulation n. 889/2002 with which the principles introduced by the Montreal Convention on air transport of passengers and their baggage were also applied to transports carried out in a single member state, and the previous Regulation 2027/1997 was amended in order to align it with the provisions on the Montreal Convention and thus create a "uniform system of responsibility for international air transport" (Bokareva, 2015, pp. 3ss; Schoonover, 2011, pp. 36ss). The adoption of this Regulation was motivated by the deemed need that the provision of unlimited liability of the carrier in the event of death and injury of passengers would also be applied to national transport, so that the Community air carrier, regardless the national or international character of the transport performed, could make use of art. 21, paragraph 2, of the Montreal Convention only in cases in which it demonstrates that the damage was not due to negligence, unlawful act or omission of its own or of its employees or appointees.

This Regulation highlighted the need for Community air carriers not to apply different liability regimes on various routes of their networks, as this would not have been useful and could have created "confusion for passengers" and, moreover, reiterated the requirement, formalized by art. 50 of the Montreal Convention, that member states ensure that their air carriers are adequately insured, also in light of the fact that art. 7 of Council Regulation 2407/92 imposed this insurance obligation as a condition of issuing licenses. Articles 6 and 7 of the present Regulation have thus been indicated the parameters of minimum insurance coverage to be paid by air carriers for the specific responsibility connected to death and personal injuries caused by accidents, loss, destruction and damage of baggage and goods, as well as for the liability connected to damages suffered by third parties; the following art. 8 introduced "effective, proportionate and dissuasive" sanctions consisting, for Community air carriers, the possibility of withdrawal operating license, and for non-EU air carriers and aircraft operators using aircraft registered outside the Community, the prohibition of landing in the territory of a member state[1].

constitute delay to the national courts. The minutes reflect that upon request from the Representative of China to incorporate a previously drafted definition of delay into what was to become Article 19, the Chairman of the Conference, supported by the Chairman of the Drafting Committee, commented that because of the impossibility of drafting a precise definition for delay, the proposed definition would be struck in favor of leaving the definition to national courts (...)". in the same orientation in the next cases: Mraz v. Lufthansa German Airlines, 2006 US Dist. Lexis 3961 (E.D.N.Y. 2006) and Kandiah v. Emirates (2007) O.J. No. 2540; 2007 ON.C. Lexis 2635.

[1]Paragraph 1 of the art. 6 states that "for liability with regard to passengers, the minimum insurance coverage amounts to 250,000 SDRs per passenger", and therefore sets minimum insurance requirements at a level significantly higher than the limits of liability dictated by the Montreal

The issue of adequate insurance coverage by air carriers in relation to passengers, baggage, goods and third parties was also perceived as a priority theme in the context of a common transport policy, in order to really guarantee effective passenger protection. Although the subject does not fall within the scope of this work, it is essential to mention Regulation n. 785/2004 regarding the insurance requirements applicable to air carriers and aircraft operators, with which the European Parliament and the Council have carefully established "the minimum insurance requirements for air carriers and aircraft operators in relation to passenger insurance, baggage, goods and third parties"(art. 1), establishing that the said Regulation should apply to all air carriers that carry out flights within the territory of one of member states to which the treaty applies, with destination or coming from it, or flying over it.

In fact, the need was felt to introduce the minimum insurance requirement for all air carriers with a valid operating license in all cases in which an air carrier or aircraft operator was liable, pursuant to the provisions of international agreements for passengers, baggage, goods and third parties. This need was based not only on reasons of "common transport policy and more effective consumer protection", even in the situation that had arisen at international level following the attacks in the United States, and which had led the Commission to pronounce the Communications of 10 October 2001 and 2 July 2002 precisely in the field of insurance in the air transport sector. The EC Regulation n. 785/2004 was, lastly, amended by the recent EU Regulation no. 285/2010, with which the minimum insurance coverage was raised for liability arising from damage to baggage and cargo (Hodges, 2018; Walulk, 2018; Hodgkinson, Johnston, 2016; Fenwick, Siems, 2017; Truxal, 2016)[1].

Convention.

[1]See in argument: Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC Text with EEA relevance, OJ L 295, 12.11.2010, p. 35-50; Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance), OJ L 293, 31.10.2008, p. 3–20. 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), OJ L 140, 30.5.2002, p. 2–5. 2001/539/EC: Council Decision of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), OJ L 194, 18.7.2001, p. 38-38. Regulation (EU) 2019/2 of the European Parliament and of the Council of 11 December 2018 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community PE/61/2018/REV/1, OJ L 11, 14.1.2019, p. 1-2.

The present "overview" of normative references in the field of international air transport contemplates, finally, the mention of EC Regulation n. 261/2004, through which the European Parliament and the Council have established common rules on compensation and assistance for passengers in the event of denied boarding (Hermida, 2001, pp. 150ss; Cotter, 2014, pp. 294ss)[1], cancellation of flight (Ewers, Von Stackelberg, 1998, pp. 1172ss) or prolonged delay, repealing EEC Regulation no. 295/91.

3. (Follows) Carrier Liability in Private International Law

Moving on to the issue of transport contracts and responsibility of the carrier in private international law, we can say that without prejudice to the application of the connection criteria provided for by the Rome Convention to contractual obligations also to the air law relations among the most salient innovations that must be highlighted the widest space reserved for the application of the lex fori also in order to allow an easier coordination between substantive rules and procedural rules relating to the same relationship. The lex fori will be competent to regulate the implementation and graduation of the warranty rights on the plane. However, the application of rules of private international law are in many cases completely satisfactory, from various points of view: both because the connecting criteria adopted are sometimes very weak and not very significant, and because the legislation identified on the basis of these connection criteria cannot be consistent with the actual needs underlying the reports to be settled. The characteristics of the Conventions of uniform international law authorize their respective incompressible areas of application and the consequent role assigned to private autonomy and state systems both from the point of view of specifying the elements of internationality relevant and ratione materiae determination of cases to which the uniform regulation refers both to the necessary moments of connection with the laws of the contracting states. These characteristics impose their mandatory and binding assessment of situations and relationships to which they refer, prevailing over the

[1] See the legislative resolution of 5 February 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) n. 261/2004 which establishes common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellation or long delay and regulation (EC) no. 2027/97 on the liability of the air carrier with regard to air transport of passengers and their baggage (P7_TA (2014) 0092). In the same spirit see the case: C-532/17, Wirth and others of 4 July 2018, ECLI:EU:C:2018:527, published in the electronic Reports of the cases. C-257/16, Roch and Roch of 18 July 2016, ECLI:EU:C:2016:628, not published.

provisions autonomously placed on the matter by national legislators therein compressed internal conflict rules. Article 10 of the 1924 Brussels Convention provided that it applied to all transport contracts for which a bill of lading was issued in a contracting state. This requirement explicitly envisaged if it were to be accompanied by an implicit constituted by the international character of the relationship. Understood in an objective or even in a subjective sense. The elements of internationality of transport relevant to the application of 1924 Brussels Convention are being confirmed at the level of positive law with the changes introduced by the Visby protocol in the Convention text (Katsivela, 2012).

Rome I Regulation (Reg. CE 593/2008) of 17 June 2008[1] on the law applicable to contractual obligations as for the other Regulations characterized by universal application the erga omnes character of the Regulation implies the impossibility for EU states to hire new agreements with third states on legal issues falling under Rome I Regulation, as indeed is provided for in Protocol n. 25 on the exercise of consistent competence attached to the Lisbon Treaty. The Regulation does not clarify the relationship between the law applicable to contractual obligations and international conventions of a material nature. The conventions of uniform law do not regulate the conflicts of laws concerning the transport contract but provide a material regulation even if not exhaustive of the shop in question. In the absence of a coincidence in content between the two sources, there is no reason to believe that Regulation n. 593/2008 excludes the application of uniform material provisions, which continue to apply in their material scope of application for the substantive regulation of transnational cases, regardless of which regulatory law is identified through the application of conflict rules. The Regulation is without prejudice to the application of international conventions governing the conflicts of laws inherent to contractual obligations, thus excluding the faculty of parties to choose which law to apply the contract, had referred precisely to foreign law, i.e. to a law other than that that naturally it would have been the regulator of contractors positions, all however with the insurmountable limit expressly determined within art. 3, par. 3 of the mandatory rules. In this case the conflict of laws did not pre-exist, it did not derive from those that were the features of the economic operation that was intended to be carried out but was generated by the upstream choice made. The freedom of parties to choose the applicable law to a contract with cross-border features has its origins in the dogmatic-juridical acquisition of the twentieth century, namely the

[1]Commission Regulation n. 593/2008 on the Law Applicable to Contractual Obligations (Rome I), 2008 O.J. (L 177) 6.

distinction between materiellerechtliche and kollisionsrechtliche Verweisung elaborated by the German doctrine where first a legal order can take consideration of the circumstance of a rule of private international law, which assumes this circumstance as a decisive criterion for the designation of the law regulating the contract to which it is accompanied in the sense that such rules consider the connection as prevalent over any other and therefore decisive, the connection of that contract with the ordering to which the parties referred precisely to it.

The autonomy of the contracting parties as can concretely be expressed through the determination of contractual rules formulated directly by the parties can thus manifest itself in the action of contractual rules of content equal to that of the rules that in a given legal system regulate the type of store to which that belongs that they constitute or even with the indirect determination of contractual rules by reference to a specific legal system. And this autonomy of the will unitarily conceived was extended to the point of including also the problem of identifying the applicable law which was solved by recognizing again the primacy of the law chosen by the parties. It follows that the norms of uniform material law of the Warsaw and Montreal Conventions, which regulate the air transport contract are conflict rules and therefore prevail over Community and national law regarding contractual obligations; in this case the exclusivity clause set forth in art. 29 of the Montreal Convention. The Regulation expressly provides for its replacement to the Rome Convention of 19 June 1980 on the law applicable to contractual obligations in member states, specifying in art. 24, par. 2 that: "to the extent that this Regulation replaces provisions of the Rome Convention, any reference to this Convention is understood to be made to these Regulations". Regulation n. 593/2008 maintains the criterion connecting the will of parties regarding the transport of goods and passengers, albeit making significant changes, especially with regard to passenger transport. A discipline for cases in which there has not been electio iuris, in the matter of passenger transport, art. 5 par. 2 states that: "the parties may choose the law of the country in which: a) the passenger has habitual residence; or b) the carrier has habitual residence; or c) the carrier has its central administration, or) the place of departure is located, or) the place of destination is situated" in combination of the connection criteria appears in the first instance identical to that used by the Rome Convention. The introduction of the criterion of habitual residence would be added to the other usual connection criteria of the matter as a determinative presupposition of the jurisdiction facilitating the actor, who could propose the action in the place that is closest to them. On the other hand,

the introduction of a connecting criterion for the determination of the applicable law on residence in the absence of further factual connections with transport would have excessively favored the weak part of the relationship. The application of passenger's habitual residence law would have resulted in high fragmentation, in legal regulation of individual contracts and induced excessive legal uncertainty for the carrier. The criterion of the habitual residence of the passenger has the advantage of facilitating the coincidence between forum and jus and making the task of the judge easier. The "disadvantage" remains open for the carrier to introduce various laws applicable to a substantially unitary journey. The carrier is obliged to suffer the application of different laws depending on whether the passenger is resident in the initial or terminal location of the trip or who normally resides in a country other than the latter. This fragmentation poses for the carrier of other problems, which needs to be able to count on regulatory uniformity also in order to calculate the risk and to share the cost of any compensation among individual passengers. The absence of flag law appears to be in line with the developments of private international law, which seems to attribute to this connection criterion a scarce importance in the discipline of international juridical relations evidently as a consequence of the shadow flags phenomenon or those hypotheses in which certain states attribute their flag to foreign vessels even in the absence of a genuine link with the respective territory. The presence of an exception clause does not actually allow addressing the determination of the regulatory law of the contract to which is more protective of the passenger. The criterion of the closest connection cannot be used to designate the law that is materially more favorable to the weak subject of the relationship. The applicable law according to art. 5, par. 2 is "the country of habitual residence of the passenger, provided the place of departure or destination is located in that country".

If these conditions do not occur, the law of habitual residence of the carrier applies. That is also the most significant difference between Rome Convention and Rome I Regulation (Cheshire, North, Fawcett, 2017), since, in the Convention, the regulation of transport of persons in the absence of choice of law is identified by the presumption of the characteristic performance, which, founding the identification of the applicable law on the "function that the legal relationship carries out in the economic and social life of the country". The rule in question must be interpreted in the light of recital n. 22 according to which the Regulation must be read in such a way as to guarantee continuity in the regulation of transport contracts with the Rome Convention and must be classified as transport contracts

with a carrier whoever has the obligation relating to transport regardless of the fact that carry out transport directly or not. Article 17 of the Regulation examined has resolved in an express way the question of the law applicable to compensation by providing that: "(...) if the right of set-off has not been agreed by the parties, compensation is governed by the law applicable to the claim for which it is asserted the right to set off (…)". Rome Convention had not found a definite answer on the subject of compensation. It was the Court of Justice through judgment C-87/01, Commission v. Conseil des communes et règions d'Europe of 10 July 2003[1] to rule in favor of the competition of the two laws. According to the Court compensation could operate in this case. It was necessary that both the requirements imposed by national law and requirements provided by Community law were satisfied by stating that: "(...) any compensation of this nature requires that occurs as far as regards each of the credits in play that the conditions regarding compensation provided for by the legal system of which they are a part respectively are not disregarded (...)". We can interpret that the criterion incorporated in the Community instruments that have resolved the issue of compensation could certainly opt for an autonomous solution to the conflict situation (Magnus, 2006, pp. 18ss). Specifically, art. 23 of the Regulation takes up Convention's solution and reiterates that international agreements that are in force regulate the conflicts of law on contractual matters prevail over the Regulation and will be included in a list that will be published. An exception is provided in the second paragraph of the same article that it prevails over the Hague Conventions of 1955 and 1978 only when the contract is intra-community, i.e.: "(...) when all the relevant elements of the situation are located, at the time of conclusion of the contract in one or more member states (...)". Article 23 does not provide anything regarding international conventions that will conclude member states after its entry into force. From an interpretative point of view Regulation conditions the prevalence of the Regulation on Subsidies to the intra-community nature of the case does not clarify when it occurs[2].

The lack of choice for the passenger transport contract the Regulation provides for a subsequent competition of connection criteria. It provides that the contract is governed by the law of the country of passenger's habitual residence provided that

[1]ECLI:EU:C:2003:400, I-07617.

[2]Articles 25 and 26 of the Regulations regulate that prevail over it are the international agreements in force governing contractual conflicts of law, establishing that these agreements will be included in a list that will be published.

the place of departure or destination is located in that country. The exception clause is provided according to which the possibility remains to assign relevance to the criterion of closer connection with a country other than that indicated in par. 2. Of course it may happen that the central administration of the carrier coincides with the place of departure or with that of destination of the trip. The power of choice of the applicable law may be directed only towards a regulatory law that presents material links with the case. This type of legal transaction belongs to the group of contracts for membership since it is concluded through the purchase of the ticket, as a result of which the traveler acquires the right to be transported from one place to another under certain conditions. The carrier has a considerable freedom of action since it can decide to locate the central administration in a third country, whose order is scarcely protective of the interests of the user in order to make the choice of law possible for the various contracts that intends to stipulate, in this case the transporter manages to make applicable a regulation that has not been the subject of community harmonization. The faculty of choice of the applicable law allows a wide margin of maneuver to the carrier both because the power of choice for the conformation of the relationship presents unilaterally and because the carrier can legitimately decide to locate its central administration in a country whose forecasts regulations are less protective of the passenger and then designate the latter as the law governing the contract. The power to determine the applicable law can be exercised to a certain extent by the carrier who can independently determine the conformation of contract regardless the mandatory rules of the country in which it decides to offer its service. The evaluation of the contractual relationship makes it possible to appreciate which profiles of carrier's responsibility escape the application of uniform legislation and are subject to discipline through conflicting mechanisms.

Mechanisms of balancing between the interest of the company to the application of its law to an indistinct series of transport contracts and those of the user that can be favorably oriented towards the application of the law that it knows best and with which it has greater ease of approach as long as this law contains material connection elements with the contract. The provision in question does not provide a real balance between different laws applicable to an international transport contract but limits itself to introducing certain connection criteria that can lead to the application of one or other law through the use of mandatory rules or to concretization techniques of public order in favor of that which is more protective from the point of view of its material content (Leible, Lehmann, 2008, pp. 528ss;

Czepelak, 2010, pp. 47ss; Lando, Nielsen, 2007, pp. 30ss; Wilderspin, 2008, pp. 260ss. Garcimartin Alférez, 2008, pp. 2ss; Ferrari, Leible, 2009; Kenfack, 2009, pp. 4ss; Plender, Wilderspin (eds), 2009, pp. 485ss; Twiggflesner (ed.), 2010, pp. 243ss; Plender, Wilderspin, 2009, paras 8-13; Wagner, 2008, pp. 221ss; Nielsen, 2009, pp. 106ss; Staudinger, 2012; Leible, 2014; Wagner, 2009, pp. 103ss; Koller, 2013; Schollmeyer, 2004, pp. 78ss.; Clausnitzer, Woopen, 2008, pp. 1798ss; Clarkson, Hill, 2011, pp. 227ss; Gaudemet-Tallon, 2008, pp. 477ss; Van Calster, 2016; Ancel, Deumier, Laazouzi, 2016; Magnus, Mankowski, 2017; Laval, 2016; Michaels, 2008, pp. 1608ss. 1607Ss; O'hara, Ribstein, 2008, pp. 2148ss; Stone, 2016; Symeonidis, 2010, pp. 514ss; Goldammer, Jurcys, 2008. Ziegler, Takacs, 2012-3013, pp. 2ss; Caravaca, 2009, pp. 53ss; Garcimartín Alférez, 2008, pp. 62ss; Mankowski, 2017).

4. Liability of the Carrier for Default and Delay

The non-execution of the contract unlike the delay was not governed by the 1999 Montreal Convention, nor by (EC) Regulation n. 889/2002 (Woon Lee, Wheeler, 2012, pp. 43ss), of suppression or delay of departure, interruption of the trip also due to force majeure, the passenger has the rights provided by EU legislation, or by Regulation (EC) n. 261/2004 of the European Parliament and of the Council of 11 February 2004 which established common rules (Arnold, 2013, pp. 403-438) concerning compensation and assistance to passengers in the event of denied boarding, flight cancellation or extended delay (Leffers, 2010; Van Dam, 2011, pp. 259ss)[1].

[1]CJEU, joined cases C-402/07 and C-432/07, Sturgeon, G. Sturgeon and A. Sturgeon v. Condor Flugdienst GmbH and S. Böck and C. Lepuschitz and. Air France SA of 19 November 2009, ECLI:EU:C:2009:716, I-10923. The sentence was based on the Regulation of 11 February 2004, n. 261 relating to compensation and assistance to passengers in the event of denied boarding and cancellation of the flight or prolonged delay. C-203/08, P. Rehder v. Air Baltic Corporation of 3 June 2010, ECLI:EU:C:2010:307, I-04695. The sentence was based on the Regulation (EC) of 11 February 2004, n. 261 on pecuniary compensation based on the transport contract by strictly regulating the place of departure, the place of arrival of the aircraft between European Union countries. In the same orientation see also: joined cases: C-154/15 and C-146/15, K. Ruijssenaars, A. Jansen e J. H. Dees-Erf v. Staatssecretaris van Infrastructuur en Milieu of 21 December 2016, ECLI:EU:C:2016:908, published in the electronic Reports of the cases. CJEU: C-11/11, Air France SA v. H. G. Folkerts and L.T. Folkerts of 26 February 2013, ECLI:EU:C:2013:106, published in the electronic Reports of the cases. With regard to compensation for damages, the Court stated that: "(...) for the purpose of compensation under Article 7 of EC Regulation 261/2004, it only detects the arrival delay, equal to or greater than three hours, and not even the delay at departure provided for in article 6 of the same text

The so-called overbooking is referred to the concept of non-fulfillment by the air carrier due to failure to provide the service (Aufner, 2005, pp. 66ss). More than overbooking we talk about overselling, that is to say over-selling, in the presence of the usual application by the carrier of the Ticketing Time Limit (TTL), consisting in the automatic cancellation of the booking not followed by the purchase of the ticket for the booked flight, within the times set by the carrier (Guerreri, 1989, pp. 192ss; Staudinger, Schmidt-Bendun, 2004, pp. 1897ss). The phenomenon of overbooking represents a commercial policy of the carrier as a remedy for the practice spread among travelers to make the reservation in a time prior to departure, in order to guarantee a safe place on board the aircraft, without being present at embarkation. To overcome the economic damage deriving from the aforementioned phenomenon, the carriers sell seats in excess of the availability of the aircraft on the assumption that not all passengers present themselves for boarding and that overbooking may not entail practical effects detrimental to passengers rights. In the case of scheduled flights at advantageous times and requested by travelers, carrier's forecast may be incorrect, with the result that some passengers are denied boarding. The carrier is in default towards them, with reference to the contractual obligation of transport. He cannot adduce any evidence that frees him from responsibility for not having the passenger reached his destination within the prescribed period, because he consciously and voluntarily accepted the risk of denying boarding to some users. In this spirit we recall Regulation (EEC) n. 295/91 of 4 February 1991, no longer in force since 17 February 2005, because replaced by Regulation (EC) n. 261/2004 through which a compensation system was introduced for denied boarding in scheduled air transport relative to all flights departing from a community airport except for cases of free transport only or carried out under favorable conditions according to art. 1 of Regulation as can also be seen through CJEU sentence in case: C-344/04, The Queen, ex parte: International Air Transport Association, European Low Fares Airline Association, v. Department for Transport of 10 January 2006 (Van Vooren, Wessel, 2014, pp. 237ss)[1] and case: C-294/10, Andrejs Eglitis, Edvards Ratnieks v.

... the right to compensation, given that such compensation is not subject to the existence of a delay at departure and, consequently, to the respect of the requirements established by said article 6 (...) ". Let us add that the Court relied on the art. 7, par. 1 of EC Reg. N. 261/2004 regarding the compensation and the cause of the delay satisfies the conditions of applicability of the art. 6, par. 1 of the same Regulation since the flight has already suffered a delay from its departure which exceeded the limits established by this provision.

[1]ECLI:EU:C:2006:10, I-00403.

Latvijas Republikas Ekonomikas ministrija of 12 May 2011[1], which CJEU affirmed that: "(...) the authors of the Convention intended to shield those carriers from any other form of intervention, in particular action which could be envisaged by the public authorities to redress, in a standardized and immediate manner, the damage that is constituted by the inconvenience that delay in the carriage of passengers by air causes, without the passengers having to suffer the inconvenience inherent in the bringing of actions for damages before the courts (…)" (Verschoor, Diederiks, 2012).

The Montreal Convention did not regulate overbooking. EU legislation is applied without exceptions or limitations, to passengers departing or arriving[2] at an airport located within a EU member state (Dempsey, 2008, pp. 4-5, 66-67). This regime represented only minimal protection as was also stated in case: C-83/10, Aurora Sousa Rodríguez et al. v. Air France SA of 13 October 2011[3] where CJEU has sought to regulate and have the right of the passenger remaining on the ground to act in compensation for any further damage unless he voluntarily renounced his reservation in exchange for the compensation.

With regard to damages caused by delay in the execution of the transport, they were imposed, pursuant to art. 19 of the Montreal Convention, on the carrier, save the release evidence consisting in the fact that he and his employees and supervisors had taken all the necessary and possible measures to avoid the damage. It was a presumed fault liability, with that already seen with reference to the hypothesis of non-fulfillment in the execution of the transport. The allegedly responsible carrier, when the passenger demonstrated the existence of a transport

[1]ECLI:E:C:2011:303, I-03983.

[2]CJEU, C-452/13, Germanwings of 4 September 2014, ECLI:EU:C:2014:2141, published in the electronic Reports of the cases), of which it is necessary to retrace the salient passages. Initially, the Court established that the notion of "actual arrival time", used to determine the extent of the delay suffered by passengers of a flight (in Article 2, 5 and 7 of Regulation No. 261/2004), must be understood as corresponding to the moment when the passenger confinement situation ends "in an enclosed space, where they are subject to the instructions and control of the air carrier and where, for technical and safety reasons, their possibilities of communication with the outside world are considerably limited", a situation that does not allow passengers to" deal continuously with their personal, family, social or professional affairs"; so much so that, in its opinion, it cannot be said that the moment in which the wheels of the aircraft touch the landing strip of the destination airport, nor that in which the aircraft reaches the parking position and are operated the parking brakes or the brake blocks are positioned, since even in such situations passengers can be subjected to different constraints, due to the place where they are located. Subsequently, however, the Court establishes that the arrival corresponds to the moment in which at least one of the doors of the aircraft is opened, given that, at that moment, the passengers are authorized to leave the aircraft.

[3]ECLI:EU:C:2011:652, I-09469.

contract for that flight and the relative delay, to exempt himself from any responsibility said to prove that the cause of delay was to be ascribed to an event not predictable and not attributable to he or his employees and supervisors in relation to this event. He was required to prove that he had acted with due diligence. On the contrary, the carrier could not exonerate itself if the cause of damage was attributable to the aircraft, such as its malfunction, to the crew or to airport manager, when this could be considered a person in charge of the transport debtor or if it consisted of the unavailability, recurrent, therefore predictable of a slot route slot (Goeteyn, 2007, pp. 196ss)[1].

The difficulty of identifying the time and space limits that determine a delay such as to entail a liability for the carrier is always open, also because a precise term within which the transport must be performed, is not foreseen nor by the conventional standard uniform, nor from the community one, or from the navigation code. Nor can it detect what can be deduced from the ticket, given that the general conditions of air transport of people, drawn up in IATA, to which most of the airline companies adhere, reported in an extract on the back of the ticket, establish that the times indicated in the tickets and during the hours are not guaranteed. Obviously the possible vexatious nature of the clauses included in the transport contract, which limit or exclude carrier's liability, can be envisaged, thus creating an imbalance between parties' performances.

With regard to the extent of delay, for which the carrier may be called upon to respond, the doctrine in the past claimed that transport must be carried out within a reasonable time, adopts an objective evaluation criterion (Mateesco Matte, 1964, pp. 410ss) and considers that a hypothesis of delay in the event that the aircraft reaches its destination in a considerably longer time than the average one required (Smirnoff, 1967, pp. 259ss; Tosi, 2004, pp. 1121ss; Goldhirsch, 2000; Goldhirsh, 1988) determined on the basis of times provided by the air carrier for the performance of an air transport of that type, leaving the decision appealed to the fair judge on the existence or otherwise the delay (Gronfors, 1956, pp., 120ss; Litvine, 1970; Mankiewicz, 1989, pp. 240ss. F. Manuhutu, 2000, pp. 265ss; Cachard, 2016).

Regulation (EC) n. 261/2004 expressly established the extent of delay which obliges the carrier to pay the minimum protection to the passenger. The passenger

[1]See the communication of the European Commission entitled: An action plan for airport capacity, efficiency and safety in Europe of 24 January 2007.

can agree on the carrier even in the event of delay lower than that provided for by the regulation in question (not compensated) when significant damage has arisen (Schubert, 2007, pp. 65ss)[1].

In order for the carrier to be held liable for delay, the passenger who acts in court to obtain the relevant compensation for damages must prove the existence of delay, as well as that it occurred within the aforementioned space-time limits and must prove the existence of damage, consisting in a reduction in assets or injury to psycho-physical integrity as a direct consequence of the delay itself as was also stated through the Court of Justice in case: C-83/10, Aurora Sousa Rodríguez and others v. Air France SA of 13 October 2011. The difficulty encountered by the passenger in providing the substitute proof of the damage in question is evident, so much so that the jurisprudence on the subject is oriented in attributing compensation to the passenger even if no proof of damage is provided, both in case of non-execution and delay, frequently for the determination of the same resort to empirical criteria, such as the one constituted from a fraction of the ticket price.

Regulation (EC) n. 261/2004 introduced, on 17 February 2005, fundamental changes with respect to the previous legislation, assigning minimum rights to passengers in the event of denied boarding to non-consenting passengers for flight cancellation and delay. Clear indications of this new trend can be found in the recitals of CE Regulations 261 of 2004 (which establishes common rules on compensation and assistance to passengers in the event of failure to board, flight cancellation or prolonged delay) and Regulation 2111/2005/EC (Stephen Dempsey,

[1]CJEU, C-173/07, Emirates Airlines v. Schenkel of 10 July 2008, ECLI:EU:C:2008:400, I-05237, which the CJEU has accepted the application of Regulation (EC) 261/2004: "(...) applied to a return trip from a non-Member State origin by a non-community carrier on a round trip itinerary (...)". In the same spirit of orientation the next case: C-344/04, International Air Transport Association and European Low Fares Airline Association v. Department for Transport of 10 January 2006, ECLI:EU:C:2006:10, I-00403, where the CJEU has denied the suitability to base the judgment of illegality of the contested Regulation; although confirming that the Community is bound by the conventional rules as a contracting party, the judges of the Court did not recognize any violation by the articles. 5, 6 and 7 of the contested Regulation on which the ITA and ELFAA (European Law Fares Airline Association) complaints were pinned. The ruling established that the Montreal Convention is the exclusive object of the discipline of compensation for damages: "(...) on an individual basis which (...) derives to passengers from the prolonged flight delay (...) the two texts regulations would be characterized by a different field of application ratione materiae since the conventional rules are preordained to regulate the compensation due to the traveler due to the damages individually reported for not having reached their destination on time (...)". We can say that the scope of application of the Montreal Convention cannot be said to be limited to compensation for the individual damages suffered by passengers in quantifying the indemnifiable damage to the single passenger that should be traced back to the art. 6 of the Regulation examined.

Jakhu, 2016)[1] (which established a Community list of air carriers subject to an operating ban). EU legislator, in fact, expressly aims to establish rules capable of guaranteeing a "high level of protection for passengers" (1st recital of EC Regulation 261/204), also ensuring "effective publicity to information relating to safety" (9th recital of EC Regulation 2111/05). The ultimate goal is to allow passengers to "effectively exercise their rights" (20th recital of EC Regulation 261/04) while ensuring "their right to make an informed choice" reaching "a fair balance between commercial viability of air carriers and passenger access to information" (14th recital of EC Regulation 2111/05)[2]. The synoptic reading of recitals shows that alongside the protection of market transparency (and therefore of correct competition), passenger's figure as a weak subject of the contract arises, now in the foreground. In a liberalized market it is essential to guarantee the right to information, in order to allow the passenger to make informed and prudent choices, rewarding the commercial policies of some airlines knowing that they do not go beyond the minimum levels of safety and commercial fairness required. Lastly, in fact, market transparency should allow the survival of the most virtuous carriers, favored by passengers' preferences, at least in theory (Bobek, Prassl, 2016).

The aforementioned Regulation has also sought to provide these passengers with the type of assistance of their choice, alternatively between the following options: reimbursement within 7 days of the full price of the ticket, at the same price at which it was purchased for the part(s) of journey not made, and for the part or parts of the journey already made if the flight in question has become useless with respect to passenger's initial journey schedule, or, possibly, to a return flight, as soon as possible, to the initial departure point. Boarding on an alternative flight to the final destination. In comparable transport conditions that in this case the amount of the expected sum of money can be reduced by 50% depending on the actual time of arrival at destination, compared to that of the original flight and the length of the flight itself. Boarding on an alternative flight to the final destination, in comparable transport conditions, at a later date of your choice, depending on the

[1]Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (Text with EEA relevance), OJ L 344, 27.12.2005, p. 15-22.

[2]CJEU, C-255/15, Mennens of 22 June 2015, ECLI:EU:C:2015:472, published in the electronic Reports of the cases.

availability of seats according to art. 8 of the Regulation (Dempsey, 2008).

The passenger who has been denied boarding then has free right to meals and drinks proportional to the waiting time. To the possible accommodation in a hotel for overnight stay or for a further stay than the one provided by the passenger; to transport from the airport to the place of accommodation and to two telephone calls or messages via telex, fax or e-mail according to art. 9 of the Regulation. It is recognized according to art. 11 of the Regulation to the non-consenting passenger unlike the provisions for the consenting passenger the right to request additional compensation from which the compensation obtained with the aforementioned methods can be deducted.

In the event of flight cancellation that according to art. 5 of the Regulation must signify the failure to carry out an originally planned flight and on which at least one seat has been booked, the passengers concerned are offered the possibility of choosing between the aforementioned options pursuant to art. 8 of Regulation as well as the possibility of making two telephone calls or messages via telex, fax or e-mail. In addition, if the passenger chooses the alternative flight and departure time that can reasonably be expected for the new flight, it is postponed by at least one day with respect to the scheduled departure time for the canceled flight, the passenger has the opportunity in relation to the waiting time, to take advantage of meals and drinks and to receive adequate hotel accommodation, in addition to the aforementioned monetary sum unless the carrier provides proof of having informed the passengers of the cancellation of the flight within the time indicated by the Regulation with exclusive regard to the sum of money mentioned above that the cancellation of the flight is due to exceptional circumstances that could not have been avoided even if all the necessary measures had been taken according to art. 7 of the Regulation. If the reasonably foreseeable departure time is postponed by at least one day, with respect to the one originally set, the carrier must provide assistance in the following forms: hotel accommodation, transport between airport and hotel, or other place of accommodation. If the delay is equal to or greater than 5 hours, the carrier will refund the full price of the ticket according to times and methods established by the Regulation.

The most significant difference between Regulation (EEC) n. 295/91 and new Regulation (EC) n. 261/2004 concerns its scope of application. The Regulation applies to any operating air carrier, whether Community or non-EU, or for scheduled or non-scheduled transport departing from a member state, as well as to

any Community carrier operating a flight to a EU country. These applicability requirements are supplemented by the additional assumption that passengers are in possession of a confirmed booking on a flight among those subject to Regulations that they present themselves for acceptance in accordance with specific procedures. The Regulation does not apply to passengers traveling for free or at a reduced rate indirectly accessible to the public with the new exception of ticket holders placed under a frequent flyer program or other commercial program implemented by air carrier or tour operator.

The relationship between new Regulation and other regulations previously highlighted certainly the recourse to community regulations guarantees a minimum level of protection and does not prevent the creditor from using a different regime that can at least theoretically guarantee him a higher compensation (Finger, Holvad, 2013, pp. 59ss)[1]. The new legislation specifies that the compensation granted under the Regulation can be deducted from further compensation. In consideration of this principle, the coexistence of these regulatory instruments has been affirmed.

Another novelty is the express indication of the obligation for the carrier to make an appeal in advance to the volunteers based on Regulation (EEC) n. 295/91 was purely eventual and left to carrier's discretion to try to avoid having to deny boarding to those passengers who, like booking volunteers, cannot absolutely renounce to leave on schedule. For volunteers Regulation (EC) n. 261/2004 establishes express and specific forms of protection: the assistance referred to in the aforementioned art. 8 and additional benefits agreed between the consenting passenger and carrier, distinct from those granted to non-consenters. The old Regulation provided for a unified protection with the only distinction however re-proposed by the new legislation on the exclusion of the right to additional compensation for volunteers (Lawson, Marland, 2011, pp. 99ss; Dempsey, Johansson, 2010 pp. 208ss)[2].

[1]See on the subject: Regulation (EC) n. 1794/2006 of the Commission, of 06 December 2006, which establishes a common tariff system for air navigation services. Following the modification of the Regulation (EC) n. 1191/2010 by the Commission, which came into force on 06 January 2011, the common charging system is subject to the principles set forth in the previous Regulation (EC) n. 550/2004 and compatible with the Chicago Convention on International Civil Aviation of the International Civil Aviation Organization (ICAO). Service providers must provide details of the costs associated with the provision of their services, general administrative costs, training expenses, study expenses, audits and tests as well as research and development costs.

[2]The notion of "additional compensation" pursuant to art. 12 of the EC Regulation n. 261/2004 must

Obviously the sum of money provided by the new legislation to be paid for denied boarding is undoubtedly greater than that established by the previous one.

The new legislation indicates as subject all the forms of protection provided for therein, the operating air carrier while the old regulation simply refers them to the air carrier, meaning an air carrier operating or intends to make a flight within a contract with a passenger or on behalf of another person, natural or legal, who has a contract with that passenger. This latest news was introduced to make the new legislation applicable also to passenger transport, carried out by resorting to new forms of aircraft utilization that are found in practice, such as wet leasing and code sharing, in which the subject who physically carries out the transfer is different from the one who issued the ticket of passage as well as in all the cases in which he is an organizer of an all-inclusive trip (Van Houtte, 1940, pp. 86ss; Moll-Osthoff, 2013, pp. 368ss; Crawford, 2010, pp. 17ss; Moore, 2001, pp. 224ss; Cunningham, 2008, pp. 1043ss; Stewart, 2015; Ford Ferrer, 2012, pp. 128ss; Abeyratne, 2017; Adeyratne, 2016)[1] to stipulate with the carrier the transport contract in favor to tourist-passenger (Corona, 2012, n. 7). In this latter case, both monetary sum and other various forms of assistance guaranteed to passengers are paid directly to the tourist who is protected not only in the case of a prolonged delay but also in the event of flight cancellation (Polkowska, 2011).

be interpreted in the sense that it allows the national judge, under the conditions established by the international law of uniform law or national law, to grant compensation for damage, including that of a moral nature. Italy should not have always included moral prejudice in the notion of damage, also in application of the Warsaw Convention and then of Montreal; and, finally, the Spanish judge should not have asked the European Court of Justice (in case 83/10) for clarification in this regard. Furthermore, the reference to the so called soft law in order to derive a norm of general international law, in the form, since it is a draft Convention which (dating back to 2001) has no longer been followed, in substance, as this concerns damage caused by a international offense attributable to a State, for which it is not at all certain that it could derive a civil law notion of damage, which concerns the relations between citizens; and, finally, in the method, because, in doing so, the uniform international discipline would be interpreted from the outside, contravening what is required by the art. 31 of the 1969 Vienna Convention on the Law of Treaties.

[1]CJEU, C-168/00, Leitner v. TUI Deutschland GmbH & Go KG of 12 March 2002, ECLI:EU:C:2002:163, I-02631. The CJEU has interpreted the art. 5, n. 2, fourth paragraph of Directive n. 314/90, and clarified that: "(...) since the rule allows that, as regards damages other than corporal ones, the Member States may admit that the compensation is contractually limited, provided that this limitation does not is unreasonable, this means that the Directive implicitly recognizes the existence of a right to compensation for moral damages ... which cannot be unreasonably compressed by the national legislator (...) the art. 5 of the Directive must be interpreted in the sense that in principle the consumer has the right to compensation for the non-material damage deriving from the non-fulfillment or from the improper performance of the services provided on the occasion of an "all-inclusive" trip (...)".

Particular importance is given to the inalienability of the passenger for the rights deriving from the new discipline, as it was intended to affirm the impossibility to derogate or restrict the vectorial obligations provided for by art. 15 Regulation by means of clauses included in the transport contract. The new Regulation provides for the operating air carrier that has launched a monetary sum or the aforementioned forms of assistance, the right to request compensation from anyone, including third parties, in accordance with the applicable law, as well as to take action against a tour operator with to which you have contracted to obtain a refund or vice versa (Giesberts, Kleve, 2009 pp. 293-304; Bobek, Prassl, 2016).

The obligation of each member state to designate a body responsible for the application of new Regulation for flights departing from its territory and for those directly coming from a third country. On the other, the right for the passenger was also stated, which considers that it has been the victim of a violation of its own rights sanctioned by the same Regulation, to present a complaint to each responsible national body, which can adopt effective, proportionate and dissuasive sanctions, thus guaranteeing a more concrete protection to the passenger.

The legislative decree of 27 January 2006 n. 69 also introduced the sanctioning provisions for the violation of Regulation (EC) no. 261/2004 providing that ENAC is the body responsible for the application of the Community Regulation and implements the envisaged administrative sanctions. In reality, the air carrier that fails to pay the compensation to passengers for denied boarding is punished with an administrative sanction from € 10,000 to € 50,000. If he fails to pay the compensation to passengers for flight cancellation (MILNER, 2009 pp. 216ss)[1] he is punished with an administrative fine of € 2,500 to € 10,000. If he does not provide accommodation in the upper or lower class, he is punished with an administrative fine ranging from € 1,000 to € 5,000. If the provisions establishing the precedence and assistance to persons with reduced mobility and unaccompanied children are violated, the carrier is punished with an administrative fine ranging from € 10,000 to € 50,000. Finally, in the event of a breach of information obligations, an administrative fine between 2,500 and10,000 € is

[1]According to the ruling of the EC Court of Justice, pursuant to Regulation (EC) n. 261/2004 it is possible to speak of a cancellation: "(...) when the flight initially planned and delayed pours into another flight, that is when the programming of the original flight is abandoned and the passengers of the latter join those of a flight in turn scheduled, regardless of the flight for which the passengers thus transferred had made their reservation (...) "while the flight is delayed and cannot be considered canceled, when:" (...) regardless of the duration of the delay and even if it was significant (...) it involves a departure in accordance with the originally planned schedule (...).

punished (Galand Carnaval, 2001, pp. 93ss; So, Chang, 2013, pp. 3ss)[1].

Market liberalization and the creation of ever new and heterogeneous forms of collaboration between air carriers (Dupont-Elleray, 2002, pp. 354ss; Scharpenseeel, 2001, pp. 92ss; Andersen, 2009) aimed at a better exploitation of resources have led to unclear contractual structures for the passenger, who often came to know the identity of the subject who would have materially carried out the transport service, only once arrived at the airport, if not even at the time of boarding. It is obvious that in an ideal market in which virtuous subjects operate, the identity of the carrier may not be relevant. However, without thereby wanting to carry the transport contract within the scope of the intuitu personae contracts, it must be assumed that for the purpose of proper competition and an informed choice on the part of the passenger, prior knowledge of the actual carrier is primary information, to be provided at the time of booking or, in any case, as soon as it is identified.

In light of the brief overview of EU legislation, it can be concluded that the information concerning the air transport contract that it intends to stipulate must be made known and accessible to the passenger, obviously before the conclusion of the contract. However, we must ask ourselves in which language passenger information should be provided: it is clear that the carrier will not be able to prepare notices in every passenger's mother tongue.

Therefore, the carrier must provide information in the official language of the country of departure and, of course, in one of the most widely spoken languages (English, French, German, Spanish, etc.), but this is no guarantee that the passenger actually manages to understand what is communicated to him. The opening of the market to an ever wider catchment area has statistically increased the percentage of passengers who only know their mother tongue. The answer to this problem is to be

[1]See also the Restatements prepared by the American Law Institute, including: civil liability (Torts), contracts, ownership, conflicts of law, international relations law and product liability. The Restatements are one of the most authoritative secondary sources and have extended a considerable influence in the judicial area. English law is decidedly more reluctant to the method of conceptualization especially in the field of torts, an area in which there are still evident traces of medieval forms of action (the six titles in which the oldest of the torts is still divided, that of trespass) and the traditional typicality of the remedies in tort often hinders jurisprudential evolution. English law and in particular the common law system was based on liability for unintentional harm (unintentional harm); the fault as tort of negligence that does not correspond to the violation of the general rules of prudence, caution, diligence, etc .; the specific duty of duty of care involved between the offender and the victim. There was no provision for a general negative duty clause (neminem laedere) as the injured party should prove the damage (damage) was caused by violence (breach of duty) and in the case that it has not been proven it does not exist in this case also responsibility.

found, in our opinion, in the best accessibility to information to all and in a duty of self-information of the passenger himself as was also stated in CJEU sentence: C-486/11, JR Esteves v. Companhia de seguros Allianz portugal SA of 21 March 2013[1].

The European Commission launched on 13 March 2013 a proposal to amend EC Regulation no. 261/2004 (Arnold, De Leon, 2010, pp. 92ss), aimed at clarifying the unclear points and eliminating the gaps that over time have led member states to the uneven application of the Regulation text. If this were to be approved, the Parliament and the Council would change the number of questions relating to the right to assistance and compensation of passengers, also in relation to the issue of air delay. For reasons of completeness of exposition, it is necessary, then, at least to mention them, on the basis of a purely textual analysis of the proposal to modify EC Regulation n. 261/2004 (Balfour, 2010, pp. 72ss; Kim, 2008, pp. 32ss; Ritorto, Fisher, 2017, pp. 562ss).

The first element of novelty, extremely relevant for the matter that interests us, is the definition, as well as the "departure time", which coincides with the moment "in which the aircraft leaves the boarding gate, pulled or with its own engines (time of departure from the ramp) (art. 2, l. u), of the arrival time, which would coincide with the moment in which the aircraft reaches the landing door, operating the brakes parking (arrival time at the ramp) (art. 2, l.v).

It must be remembered, however, that on this last point CJEU, in the Germanwings sentence of 4 September 2014, differently pronounced, considering as the arrival of the flight the moment when at least one of the aircraft doors is opened. It is possible, therefore, to consider that the notion proposed by the Commission, should it be approved, at the very moment of introduction of the new text of EC Regulation n. 261/2004, it would already be obsolete.

With regard to welfare measures, some of the conditions for their provision are changed. Those referred to in art. 9, 1st paragraph, l. a) and art. 9, par. 2 °, which consist of meals, drinks and calls (or in any case communications), are guaranteed for the simple delay at the departure of at least two hours, without the relevance of the relationship between the delay (in any case more than two hours) and length of the air route. Those referred to in art. 9, par. 1, l. b) and c), which consist in the accommodation in the hotel and transport between airport and place of

[1]ECLI:EU:C:2013:188, published in the electronic Reports of the cases.

accommodation, are no longer provided when the departure time that can be reasonably foreseen is postponed by at least one day with respect to that previously provided, but when the delay is at least five hours and includes one or more nights. Except, with regard to hotel accommodation, the possibility that the flight covers a distance equal to or less than 250 km and the aircraft has a maximum capacity equal to or less than 80 seats (except for the case in which the flight is a coincidence).

As many assistance measures, but qualitatively different from those referred to in art. 9, are then provided (pursuant to the new paragraph 5 of article 6) for delays on the track, over an hour, and less than five hours. In such cases, the air carrier is considered obliged to offer: access to sanitary facilities, drinking water, cabin heating or cooling, medical assistance, if necessary. In the case of a delay of more than five hours on the track (but no more), it is foreseen that the aircraft, unless impediments, must return to the boarding gate or, in any case, position itself in an area suitable for disembarking, so to allow passengers to get off and take advantage of the assistance provided in art. 6, par. 1 °. The latter element would lead us to assume that the delay on the track taken into consideration is only that which occurs at the start, during the boarding operations, were it not for the proposed concept, provided by the Commission, of "delay on the track", with which reference is made "to the departure, time of stay on the ground of the aircraft between beginning of the boarding of passengers and the take-off time of the aircraft, or, on arrival, (at) time elapsed between aircraft contact with the ground and start of passenger disembarkation operations".

The introduction, in par. 2 ° of art. 6, for the case of delay, regulation of pecuniary compensation, which differs considerably from the application of this measure made by the EU Court of Justice, starting from the "Sturgeon" sentence of 19 November 2009 (Gutman, 2014, pp. 79ss)[1]. The delay in arrival relevant to the

[1]CJEU, joined cases: C-402/07, Christopher Sturgeon, Gabriel Sturgeon and Alana Sturgeon v. Condor Flugdienst GmbH, op. cit., which has affirmed that: "(...) if the flight reaches its destination with a delay equal to or greater than three hours before the scheduled arrival time, the passenger has the right to compensation, since such compensation does not depend on the existence of a delay at departure and, consequently, to the respect of the art. 6 (...)". joined cases: C-581/10 and C-629/10, Nelson of 23 October 2012, ECLI:EU:C:2012:657, published in the electronic Reports of the cases. the CJEU moves from the different classification to be attributed to the nature of the compensation established by the Regulation also for the delay to destination (according to the interpretation of the sentence 11.19.2009) with respect to to compensation for damage recognized by the Montreal Convention in the event of delay. The first represents: "(...) a compensation for the inconvenience that any passenger suffering from a prolonged delay bears regardless of the further prejudicial

emergence of the compensatory obligation, in fact, is no longer expected in the three hours, with respect to the established arrival time, but: five, for all the routes within EU and for routes to/from third countries up to 3500 km; of nine, for journeys to/from third countries between 3500 and 6000 km; of twelve, for journeys to/from third countries equal to or greater than 6000 km. Moreover, it is specified, this discipline also concerns the case in which that time indicated should differ between the originally scheduled arrival time and the one that actually occurred, when it was changed by the carrier, unless the change was communicated to the passenger at least 15 days before the original departure time.

The regulatory framework that would derive from the introduction of the new concept of "prolonged delay", never less than five hours and measured, for routes outside EU, depending on the length of the air route, does not seem, however, at all convincing. If the intention was to guarantee, better than in the past, the effective and consistent application of passengers rights, increasing their protection, certainly no such result has been achieved. As is evident, in fact, following such a discipline the rights of passengers come to be eroded. They would never enjoy compensation in the event of late departure less than five hours, unlike what is currently the case (which only takes three hours). In the case of non-EU flights, then, they would only be entitled to delays of more than six hours (for routes equal to or greater than 3,500 km) or to twelve hours (for those equal to or greater than 6,000 km), which would seem to extend considerably the cases in which the companies are not obliged to pay pecuniary compensation. Among other things, it should be noted, it is also difficult to explain why the right to obtain compensation is based on different assumptions in the case of community flights rather than non-EU, almost as if the inconveniences due to long waits, at departure, are different (in relation to their relevance) depending on the destination of flights (Dempsey, Milde, Khadjavi, 2004). On the other hand, Commission's intention to introduce par. 4 ° of art. 6, a specific provision aimed at regulating the possibility for the carrier not to pay the compensation, if it can prove that the delay or change in time

consequences that each can bear further; the second one is the reintegration of the actual prejudice suffered by the individual due to the delay. The first can be identified according to standardized parameters (...) the second imposes the proof of the prejudice whose measure can vary according to the specific circumstances and the subjective conditions of each and which, in case of dispute, must be judicially ascertained (...)". C-394/14, Sandy Siewert and others v. Condor Flugdienst GmbH of 14 November 2014, ECLI:EU:C:2014:2377, published in the electronic Reports of the cases. in relation to the long delay. The Court also relied on the exceptional circumstances of the delay. C-429/14, Air Baltic Corporation AS v. Lietuvos Respublikos specialiųjų tyrimų tarnyba of 17 February 2016, ECLI:EU:C:2016:88, published in the electronic Reports of the cases.

is due to exceptional circumstances and that this delay or change could not be avoided by adopting all reasonable measures in case (georgiadis, 1953, pp. 16ss; dempsey, 2004, pp. 231ss. choi, 2005, pp. 46ss; larenz, canaris, 2003, pp. 377ss; canaris, 1989, pp. 161ss)[1] CJEU: C-12/11, Denise McDonagh v. Ryanair Ltd of 31 January 2013[2]. Among other things, the European Commission has specified that the exceptional circumstances can concern not only the flight in question, that is the one that has reported the delay for which the compensation is demanded, but also the flight previously operated with the same aircraft.

It then comes to be specified, to the new art. 7, par. 2 °, that in the event that the passenger, following a delay of at least five hours, chooses to continue the journey pursuant to art. 8, par. 1, l. b), being repaid, through comparable transport situations, towards the final destination, as soon as possible, the compensation could be requested only once in relation to the journey to final destination as was also stated in CJEU cases: C- 321/11, Germán Rodríguez Cachafeiro, María de los Reyes Martínez-Reboredo Varela-Villamor v. Iberia, Líneas Aéreas de España SA of 4 October 2012[3]. It is not clear, however, whether or not this discipline also refers to the case of delay, expressly referring only to new cancellations and loss of a connection. However, it would appear to have to be answered in the affirmative, since it would replace the paragraph providing for the carrier the possibility of reducing the compensatory measure by 50%, which also applies to flight delays as established also in CJEU cases: C-22/11, Finnair Oyj v. Timy Lassooy of 4 October 2012[4].

[1]CJEU, C-549/07, Wallentin-Hermann v. Alitalia 549/07 of 22 December 2008, ECLI:EU:C:2008:771, I-11061 which has specified that it cannot be considered as exceptional circumstance a technical problem to the aircraft due to lack of maintenance but can be considered exceptional: "(...) only those circumstances connected to an event that is not inherent to the normal exercise of the activity of the air carrier in question and which escapes its effective control due to its nature or origin (such as an aircraft construction defect such as to compromise safety, damage due to terrorism or sabotage, piracy, volcano dust) (...)". And certainly the criterion of ascertaining the legal causality based on the preponderance of the evidence or of the more likely than not, which justifies the causal link between accident or pre-impact and shock in plane or train accidents, shipwrecks, piracy, terrorism, such as events considered certainly productive of psychologically relevant reactions. In particular, the German system distinguishes between: physical prejudice (e.g. pain), psychic prejudice (e.g. depression after aesthetic disfigurement), social prejudices (e.g. decrease in a person's social value) and prejudices about the quality of life developing in tempis, the figure of the allgemeines Persönlichkeitsrecht, or of the general right of the personality, as an additional asset whose injury gives the right to compensation for damages, even non-pecuniary ones.

[2]ECLI:EU:C:2013:43, published in the electronic Reports of the cases.

[3]ECLI:EU:C:2012:609, published in the electronic Reports of the cases.

[4]ECLI:EU:C:2012:604, published in the electronic Reports of the cases, which the CJEU has declared

Finally, a new introduction would be art. 6 bis of the aforementioned Regulation, aimed at guaranteeing assistance and compensatory measures for the passenger victim of a loss of connection, following a delay or a change in the timetable of a previous flight. It is envisaged that if waiting times last for at least two hours, meals and drinks must be provided and the possibility of making communications must be given.

The rerouting, even if it is not well specified, would seem to have to be provided, as well as for the delay referred to in art. 6 of the Regulation, should the wait be at least five hours, to which would be added the hotel accommodation and the transfer from the airport to the place of accommodation, if the time of the alternative means of transport provided was provided for at least five hours after the departure time of the missed flight and the delay included at least one night. In the event of loss of a connection following the delay of one of the previous connections, it is established that the passenger has the right to compensation, in accordance with the (new) art. 6, par. 2, by the air carrier that operated the previous connection (for this purpose the delay is calculated by referring to the estimated time of arrival at the final destination).

that: "(...) to ensure full effectiveness of these rules, the notion of denied boarding must be interpreted extensively and cannot be limited to" overbooking. "This is clear from the preparatory work for adoption According to the EU legislator, the practice of denied boarding is due to two reasons: the first is the need to transfer passengers who cannot take the flight they have booked due to operational problems such as the late arrival or cancellation of correspondence flights, or the replacement of a damaged aircraft with a smaller capacity aircraft, so the transferred passengers generate an unexpected demand for seats, which sometimes forces them to deny the boarding to the passengers of the next flight The second reason that involves the practice of "overbooking" is the "no-show" (passengers who do not show up at the departure of a flight p for which the fifteenth recital of the Regulation n. 261/2004 states that: "(...) (d) should be considered an exceptional circumstance the case in which the impact of an air traffic management decision in relation to a particular aircraft on a particular day causes a long delay, a delay leading to an overnight stay or cancellation of one or more flights for said aircraft (...)". The legislator of the Union has not manifestly foreseen that the reason of the exceptional circumstances can be invoked by an air carrier in case of denied boarding. In this regard, as the Finnish Government has rightly pointed out, even in the event of cancellation or delay due to exceptional circumstances, the passenger benefits from the right to continue on another flight and to receive assistance, pursuant to Articles 5 and 6 of the Regulation . On the other hand, nothing similar has been foreseen by the EU legislator regarding the passenger who is denied boarding. As we have seen, the passenger concerned is deprived of any assistance when his situation does not fall within the scope of application of Article 4 of the said Regulation. This confirms, in my opinion, that the EU legislator has not provided that the qualification of "denied boarding" can be excluded for reasons related to the occurrence of exceptional circumstances (...)".

5. Liability of the Carrier for the Claims to the Passenger

Article 17 of the Montreal Convention of 1999 regulates the liability of the air carrier for accidents, that is to say for death, wounding and any other bodily injury suffered by the traveler, bodily injury[1]. In reality, the liability of carrier for claims

[1]See also the Convention on the suppression of unlawful acts relating to international civil aviation of 10 September 2010, not yet in force, par. 1 where the notion of bodily injury refers. See ex multis from international jurisprudence: Eastern v. Floyd, 499 Us. 530 (1991) where the Court examined the French meaning of the expression: "lesion corporelle" deciding that: "(...) a proper translation of the term "lesion corporelle" was "bodily injury" and it did not embrace mental injury. Secondly, the Supreme Court studied the negotiating history of the Warsaw Convention and agreed that there was no evidence that that the drafters or signatories of the Convention specifically considered liability for psychic injury or the meaning of "lesion corporelle". Lastly, the Court concluded that the Warsaw Convention's amendments (The Hague Protocol 1955 and The Guatemala City Protocol 1971) and the Montreal Agreement 1966 supported the narrow translation of "leision corporelle". The issue whether passengers can recover for mental injuries accompanied by physical injuries is not presented or addressed here, since respondents do not allege physical injury or physical manifestation of in jury. Nor does this Court reach the question whether the Convention provides the exclusive cause of action for injuries sustained during international air transportation, since the Court of Appeals did not address it (...)". El Al Israel Airlines v. Tseng, 525 D.S. 155 (1999) Enrlich v. American Airlines, Inc., 360 F. 3d 366 (2d Cir. 2004), which is stated that: "(...) To address the issue presented by this appeal, we must reach the question left unresolved by the Supreme Court in Floyd (...) After reviewing that provision in accordance with the proper canons of treaty interpretation, we conclude (...) that Article 17 allows passenger to bring a Warsaw Convention action against air carrier to recover for their mental injuries but only to the extent that they flow from bodily injuries (...)". See also: The Northem District of Califomia in Jack v. Trans World Airlines, Inc. (854 F. Supp. 654,665(N.D. Cal 1994) and Lloyd v. American Airlines, 291 F.3d (2002) which is stated that: "(...) the happenstance of getting scratched on the way down the evacuation slide (should) not enable one passenger to obtain a substantially greater recovery than that of an unscratched co-passenger who was equally terrified by the crash (...) if we determined that a "physical in jury, no matter how minor or unrelated, " could "trigger recovery of any and all post-crash mental injuries," that conclusion would violate the "spirit of Floyd (...) we hold that permitting passengers to recover for mental injuries that were not caused by bodily injuries violates the spirit, rather than the letter of Floyd (...)". King v. Bristow Helicopters LTD; Morris v. KLM Royal Dutch Airline which the JCEU has observed that: "(...) caused physical in jury. It may therefore cover mental injury caused by a physical injury (...) if a relevant accident causes mental in jury or illness which in turn causes adverse physical symptoms, such as strokes, miscarriages or peptic ulcers, the threshold requirement of bodily injury under the Convention is also satisfied. Bodily injury simply and unambiguously meant a change in some part or parts the body of the passenger which was sufficiently serious us ta be described as an in jury (...) The scientific developments have not changed the meaning of the article. The meaning of the phrase bodily in jury has not changed. The criterion or test remains the same. Ali that has changed is the ability of certain plaintiffs to bring their cases within it. Kotsambasis v. Singapore Airlines, 1997, 42 N.S.W.L.R. 110, the court has affirmed that: "(...) the phrase can be taken to refer to a psychological in jury. This ambiguity can only be resolved by 100 king at the intention of the contracting parties and adopting a purposive approach to the interpretation of the Convention. It is immediately apparent that the adjective "bodily" is a word of qualification or limitation (...) that courts are not at liberty to consider any words as superfluous or insignificant (...) It is clear that the draftsmen of the Convention did not in tend to impose absolute liability in respect of ail forms of in jury. No evidence that the drafters or signatories of the Warsaw Convention specifically considered liability for psychic or the meaning of

over time has gone from a limited liability regime for presumed fault to one based on unlimited and tendentially objective liability.

The Warsaw Convention of 1929 stipulated that the carrier was responsible for the accidents that had struck the passenger from the start of the boarding to the end of the disembarkation operations, including the damaging event that occurred the aircraft on board. The legislator has not limited the space-time limits so that four solutions have been proposed. The boarding operations would begin and those of disembarkation would end: a) when the passenger gets on the vehicle that will transport him to the airport of departure and when he gets off the aforementioned vehicle at the place of destination; b) when the passenger enters the departure airport and leaves the destination airport; c) when the passenger leaves the terminal building to go to the aircraft when he enters the premises of the destination terminal; d) at the moment when the passenger sets foot on the ladder that will lead him inside the aircraft until the moment he descended from the aircraft he has set foot on land (Brecke, 2012, pp. 358ss).

The carrier and its employees and supervisors could free themselves from this responsibility so as to exclude any liability for damages, proving that they have taken all the necessary measures to avoid damage according to normal diligence, or that it was not possible to adopt them in accordance with art. 20 of the Warsaw Convention (Benyon, 2013, pp. 41ss)[1]. If the passengers suffered damage from an unknown cause for a part of the doctrine they were at the expense of the carrier

lesion corporelle (...) the unavailability of compensation for purely psychic injury in many common and civil law countries at the time of the Warsaw Conference persuades us that the signatories had no specific intent to include such a remedy in the convention. Potgieter v. British Airways, C.PD. High Ct. of South Africa, 2005, has observed that: "(…) humiliated and degraded and his "dignity was severely impaired" when a flight attendant approached the plaintiff and his male partner and requested them "not to kiss each other as doing so was offensive to other passengers on the flight (...) The plaintiff and his partner allegedly hugged and kissed each other in a normal way and manner which would have accepted between two heterosexual people (...)". According to the art. 17 of the Montreal Convention the notion of bodily injury, that is the damage suffered by the passenger consisting in a physical pathology caused by a mental suffering to put in causal relationship with an accident occurred during an air transport, as long as proof of its existence is provided and of its causal relationship with the same claim. Position also inspired by the common law system. We must also take into consideration the common law systems, the protection of the interests inherent to the person has had the opportunity to develop in the case of the transport contract where the carrier has been held responsible for damages caused culpably to the passenger by admitting the competition between action in contract and in tort and the choice, between the two to offer a concrete reparative remedy to those who complain of an injury to his interests.

[1]CJEU, C-139/11, Joan Cuadrench Moré v. Koninklijke Luchtvaart Maatschappij NV of 22 December 2012, ECLI:EU:C:2012:741, published in the electronic Reports of the cases.

while the doctrine had raised doubts about it.

The regulatory regime according to the Warsaw Convention has met with strong contrasts regarding the effective protection guaranteed to passengers in consideration of the release test provided for by art. 20 of this Convention. Despite the "threats" from the United States relating to the Warsaw Convention, IATA member carriers and the Civil Aeronautic Board concluded the Montreal Agreement of 4 May 1966, raising a compensation limit of up to $ 75,000 for each arriving passenger (Balfur, Van Der Wijngaart 2016, pp. 511ss), when departing or parked in the United States, waived the release test up to this amount, with the exception of the contributory negligence of the traveler, answering for any damage that could be connected to the flight also deriving from a fortuitous event or from force majeure. This agreement represents the first sign towards the transition to a tendentially objective responsibility, more responsive to the needs of protection of the victims and protection of the subject who suffers harm to his person.

A strict liability regime, recognizing relevance not to fault but to causal link only, as well as providing carrier's liability for death or bodily injury suffered by the passenger on the sole condition that the event that caused the damage occurred in the timeline space already foreseen by the Warsaw system. For these damages it has eliminated the release document as for art. 20 of the Warsaw Convention with exclusive reference to the only damages with following delay in the execution of the transport. The Protocol identified two exempt factors of its responsibility: passenger's state of health and contributory negligence of the person who requested the compensation or of the passenger if a different subject is asking for compensation. The Guatemalan Protocol favors the spatial-temporal occurrence of damage as the criterion for imputing responsibility, no longer the criterion related to the accident.

In reality, the unlimited liability system has determined and exceeded the Warsaw system and formed the basis of the old Regulation (EEC) n. 2027/97 (Clark, 2001, pp. 138ss) and the Montreal Convention of 1999 which consists of agreements between airlines of 1995-1996: IATA Intercarrier Agreement on passengers liability (ILA) of 31 October 1995, IATA Agreement on Measures to Implement the IATA Intercarrier Agreement (MIA) of 1 February 1996; ATA Provisions Implementing IATA Intercarrier Agreement to be included in Conditions of Carriage and Tarrifs (IPA) of 16 May 1996. In these agreements, the carriers have renounced in addition to the benefit of the compensation limit also the release test up to 100,000 DSPs

save the demonstration of contributory negligence[1].

According to Regulation (EEC) n. 2027/97 modified with EC Regulation n. 889/2002 applicable to all Community carriers provided for a novelty with respect to the uniform international legislation in force at that time, the introduction of carrier's unlimited liability for passenger claims: objective up to the amount of 100,000 DSP and subjective for presumed fault more than 100,000 SDRs with the relative possibility for the transport debtor to provide the release document sanctioned by the Warsaw Convention.

Moreover, according to the same Regulation just mentioned, the carrier was obliged to pay an immediate and anticipated sum of money as a down payment on the greater damage. This sum had to be paid without delay and in any case no later than 15 days from the identification of the entitled party, if the injured party were a natural person so that he could face his most immediate economic needs. It had to be proportional to the damage suffered and in fatal accidents, the advance should not be less than 15,000 SDRs for each passenger. To protect the position of the carrier, the Regulation established that although he proceeded to bestow this lump sum[2], this did not imply his admission of responsibility, on the other that he could in any case deduct the sum paid as a down payment from the final compensation. To guarantee the balance in parties' obligations, this sum was not refundable except in the event that the damage had been caused in whole or in part by the negligence of the injured or deceased passenger or if the subsequent demonstration that the beneficiary of the advance payment was provoked or contributed to the damage provoked by his negligence or if the latter was not the person entitled to compensation.

This community regulation has been amended by Regulation (EC) n. 889/2002 of the European Parliament and of the Council of 13 May 2002 in force on 28 June 2004 for the purpose of standardizing for Community legislation with that

[1]Figure also inserted by Regulation n. 2027/97. In reality, the community legislation has requested the demonstration by the carrier of the adoption of all the necessary and suitable measures to avoid the damage or the impossibility to prepare them while the Montreal Convention charges the same to prove that the accident is not depended on his negligence or that it derives from the negligent or unlawful conduct of third parties.

[2]The Reg. N. 889/02 according to the art. 1, par. 7 which replaced Reg. No. 2027/97 limited itself in relation to the lump sum institute to raise the amount of the sum to be paid to the person entitled in the event of death. In this way the Regulation differs from the provisions of the Montreal Convention which provides for an unconditional obligation on the carrier to pay an advance in the event of death or injury to the passenger by subordinating this obligation to an express provision contained in the national legislation.

established by the 1999 Montreal Convention concerning the unification of certain rules relating to international air transport entered into force internationally on 4 November 2003 and internationally on 28 June 2004. This Convention also establishes at international level, with the exception of the limited number of flights still subject to the Warsaw system, the introduction of principles of unlimited and predominantly objective already operating at Community level in a perspective of generalized uniformity as well as in line with the evolution traced by the aforementioned international agreements as well as by Regulation (EC) n. 2027/97. An objective liability is sanctioned up to the amount of 100,000 DSP so that the carrier cannot limit or exclude its own responsibility only on the condition that the event that caused the death or injury occurred in the spatial-temporal arc already fixed from the Warsaw system while the carrier will be liable as a subjective liability for presumed fault beyond the aforementioned amount.

In this last case, with a reversal of the burden of proof on his part, the carrier, in order to free himself from all responsibility, must provide proof that the damage is not due to negligence, unlawful act or omission of his own or of his employees or agents, unlawful act or omission of third parties.

The difference with Warsaw system and Regulation (EEC) n. 2027/97 regarding the release test which does not consist in the adoption of all the necessary measures, suitable and possible to avoid the damage but in the existence of causative factors not attributable to the carrier. Damages from an unknown cause always fall on the carrier.

As in the Warsaw system and in the previous EU legislation. it is established according to art. 20 that the carrier can invoke the contributory negligence of the passenger in the cause of all or part of the damage, to exonerate himself totally or partially from responsibility. The rationale for this provision is to be found in the need for uniform international legislation to avoid a heterogeneity in reference to the causal contribution of the injured party. Deriving from the diversity of discipline between civil and common law countries. While in the former the contributory negligence reduces the amount of compensation payable by the carrier in the common law countries. The principle applies according to which the person who is responsible for the immediate cause of the damage is liable in its entirety, even if other production has contributed to its production causes.

The obligation to pay on account is thus imposed, which must be carried out by the carrier without delay in favor of the injured physical person to enable him to meet

immediate economic needs. It does not imply any admission of responsibility and can be deducted from the final compensation in accordance with what was foreseen by the Regulation (EEC) n. 2027/97. The Montreal Convention weakens the obligation in question, because it subordinates its existence to a specific provision by the national law of the carrier, thus sanctioning in fact a decrease in the degree of protection guaranteed to the injured according to art. 28 of the Montreal Convention.

The Convention is applicable not only to the contractual carrier but also to the de facto carrier pursuant to art. 39 and that it is presumed that the transport is unique if such was considered by the parties to be void, noting whether it was stipulated with a few more contracts according to art. 1, par. 3 as also stated by the Court of Justice in joined cases: C-581/10, C-581/10 and C-629/10, Emeka Nelson, Bill Chinazo Nelson, Brian Cheimezie Nelson v. Deutsche Lufthansa of 23 October 2012[1], in order to allow the application of the discipline established by the Montreal Convention also to air transport whose points of departure and destination are placed on the territory of the same EU member state without stopping in another state the Regulation (CE) n. 889/2992 with which a uniform system of responsibility for international air transport has been created which guarantees a higher level of protection for passengers involved in air accidents (Mann, 2007, pp. 401ss; Wetger, 2006, pp. 133ss; Hodgkinson, Johnston, 2016)[2].

[1]ECLI:EU:C:2012:657, published in the electronic Reports of the cases.

[2]See from the international jurisprudence: Mingtai Fire & Marine Ins. Co., Ltd. v. United Parcel Service, 177 F.3d 1142 (9th Cir. 1998); Shah v. Kuwait Airways Corp., 653 F. Supp. 2d 499, 503 (S.D.N.Y. 2009), vacated and remanded on other grounds, 387 Fed. Appx. 13 (2d Cir. 2010); Phifer v. Icelandair, F.3d, 2011 WL 3076393, 9th Cir. 2011; Rafailov v. El Al Israel Airlines, Ltd., 2008 WL 1047610 (S.D.N.Y. May 13, 2008; Walsh v. Koninklijke Luchtvaart Maatschappij N.V., 2011 WL 4344158; S.D.N.Y. Sep. 12, 2011; Pacitti v. Delta Air Lines, Inc. 2008 WL 919634, E.D.N.Y. April 3, 2008; In re Nigeria Charter Flights Contract Litigation, 520 F. Supp. 2d 447, E.D.N.Y. 2007; Paradis v. Ghana Airways Ltd., 348 F. Supp. 2d 106, S.D.N.Y. 2004; Pierre-Louis v. Newvac Corp., 584 F. 3d 1033, 11th Cir. 2009; Hornsby v. Lufthansa German Airlines, 593 F. Supp. 2d 1132, C.D.Cal., 2009; Dickson v. American Airlines, Inc., 685 F. Supp. 2d 623, N.D.Tex. 2010. Thibodeau v. Air Canada, 2012 FCA 246; O'Mara v. Air Canada, 2013 ONSC 2931 at 4; Gontcharov v. Canjet, 2012 ONSC 2279, 111 OR (3d) 135. Ejidike v. Ethiopian Airlines, 2014, ONSC 1187, 2014 Carswell Ont 2771. Erlich v. American Airlines, Inc, 360 F3d 366, 371 n. 4, CA 2, 2004; Weiss v. El Al Israel Airlines, Ltd, 433 F Supp. 2d 361, 365, SD NY, 2006; Erlich, 360 F3d at 371 n. 4; Watts v. American Airlines, Inc, unpublished opinion of the United States District Court for the Southern District of Indiana, issued October 10, 2007 (Docket No. 1:07-CV-0434); Yahya v. Yemenia-Yemen Airways & Northwest Airlines, Inc, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued August 25, 2009; Docket No. 08-14789; Aikpitanhi v. Iberia Airlines of Spain, 553 F Supp 2d 872; Aikpitanhi, 553 F Supp. 2d at 874; Fazio v. Northwest Airlines, Inc, unpublished opinion of the United States District Court for the Western District of Michigan, issued

This need for uniformity has also been implemented in the recent reform of the aeronautical part of navigation code and subsequent amendments. With regard to the indemnifiable damage, i.e. the damage that the carrier is responsible for and the damaged passenger has the right to compensation, it is emphasized that the interpretation of the term bodily injury envisaged by the Montreal Convention is not univocal (Dae-Kyu, 2004, pp. 20ss; Katsutoshi, 2001, pp. 334ss; Katsutoshi,

March 15, 2004, Docket No. 1:03-CV-808; Mbaba v. Air France 457 F 3d 496, 2006 US App lexis 18663; Brandt v. American Airlines 2000 US dist lexis 3164; Turturro v. Continental Airlines 128 F Supp. 2d 170, 2001 US dist lexis 360; Waters v. Port Authority and Alitalia 158 F Supp. 2d 415, 2001 US dist lexis 11790; Brandt v. American Airlines 2000 US dist lexis 3164 at 7; Turturro v. Continental Airlines 128 F Supp. 2d 170, 2001 US dist lexis 360; Schroeder v. Lufthansa 875 F 2d 613, 1989 US App lexis 7515; Emery Air Freight v. Nerine Nurseries (1997) 3 NZlR 723; Burke v. Aer Lingus [1997] 1 I.l.R.M. 148; Wolgel v. Mexicana Airlines 821 F 2d 422, 1987 US App lexis 8033; Fishman v. Delta Air Lines 132 F 3d 138, 1998 US App lexis 23; Sassouni v. Olympic Airways 769 F Supp 537, 1991 US dist lexis 10239; Seguritan v. Northwest Airlines 440 N.e.2d 1339, 1982 N.Y. Lexis 3686; Rogers v. American Airlines 192 F Supp 2d 661, 2001 US distlexis 17541; Serrano v. American Airlines 2008 US dist lexis 40466; Nanki v. Continental Airlines 2010 US dist lexis 11879. Wolgel v. Mexicana Airlines 821 F 2d 422, 1987 US App lexis 8033; O'Callaghan v. ARM 2005 US dist lexis 12889; Contrast Atia v. Delta Airlines 2010 US dist lexis 18806 and Okeke v. Norhtwest Airlines 2010 US dist lexis 17607; Curran v. Aer Lingus 1982 US dist lexis 15937. Haley v. Air Canada, 1998, 171 N.S.R. 289; 1998 Can lII 1140; Dick v. American Airlines 476 F Supp 2d 61, 2007 U.S. dist lexis 19349; Martinez Hernandez v. Air France 545 F 2d 279, 1976 US App lexis 6147; Mac Donald v. Air Canada 439 F 2d 1402, 1971 US App lexis 11128; Donkor v. British Airways 62 F 2d 963, 1999 US dist lexis 12503; Stone v. Continental Airlines and John Doe 905 F Supp 821, 1995 US dist lexis 17840; Rooney v. Coutts, Irish Times, May 2, 2008; Sulewski v. Federal Express 749 F Supp. 506, 1990 US dist lexis 13925; Reed v. Wiser 555 F Supp 2d 1079, 1977 US App lexis 13660; Seagate v. Changi International (1997) 3 S.l.R. 1 at para.20; Kabbani v. ITS 805 F Supp 1033, 1992 US dist lexis 15898; Waxman v Mexicana de Aviacion 13 F Supp. 2d 508, 1998 US dist lexis 10572; Sabena v. United Airlines 773 F Supp. 1117, 1991 US dist lexis 12023; Kabbani v. ITS 805 F Supp. 1033, 1992 US dist lexis 15898; Croucher v. WFS 111 F Supp 2d 501, 2000 US dist lexis 13655; Waters v. Port Authority 158 F Supp. 2d 415, 2001 US dist lexis 11790; Hasserl v. Swiss Air 388 F Supp. 1238, 1975 US dist lexis 13920 at 4; Krys v. Lufthansa 119 F 3d 1515, 1997 US App lexis 22644; Abramson v. JAl 739 F 2d 130, 1984 US App lexis 20346; Metz v. KLM 1979 US dist lexis 8375; Fischer v. Northwest Airlines 623 F Supp. 1064, 1985 US dist lexis 12846; Tandon v. United Air Lines; Walker v. Eastern Air Lines 775 F Supp. 111, 1991 US dist lexis 13402; Schroeder v. Lufthansa 875 F 2d 613, 1989 US App lexis 7515; Jack v. TWA 820 F Supp 1218, 1993 US dist lexis 692 at 5; Husserl v. Swiss Air (husserl I) 351 F Supp. 702, 1972 US dist lexis 11294 at 5. Emery Air Freight v. Nerine Nurseries, 1997, 3 N.Z.l.R. 723; Vinotica v. Air New Zealand, 2004, d.C.R. 786; Ong v. Malaysian Airlines, 2008, hKCU 441; Paradis v. Ghana Airways 348 F Supp. 2d 106, 2004 US dist lexis 25238 at 6; Igwe v. Northwest Airlines 2007 US dist lexis 1204 at 6; Weiss v. El Al 433 F Supp 2d 361, 2006 US dist lexis 32563 at 6; Knowlton v. American Airlines 2007 US dist lexis 6882 at 6; Schaefer-Condulmari v. US Airways 2009 US dist lexis 114723 at 5; Alvarez v. American Airlines 1999 US dist lexis 13656, 2000 US dist lexis 1254; Carey v. United Airlines 255 F 3d 1044, 2001 US App lexis 14834; King v. American Airlines 284 F 3d 352, 2002 US App lexis 4611; Atia v. Delta Air Lines 2010 US dist lexis 18806 and Molefe v. KLM 602 F Supp 2d 485, 2008 US dist lexis 108910; Mbaba v. Air France 457 F 3d 496, 2006 US App lexis 18663.

2005, pp. 323ss; Wan Sung, 1995, pp. 121ss; Weigand, 2001, pp. 916ss)[1]. Without prejudice to the fact that it encompasses every bodily injury suffered by the passenger on board the aircraft or during embarkation and disembarkation operations, there are considerable doubts about the possibility of having the psychic damage returned to him. This is not linked to a bodily injury, while it seems permissible to believe that it includes psychic damage that is a direct consequence of a bodily injury.

6. Carrier's Liability for the Loss or Damage of Luggage

For air transports regulated by the Montreal Convention of 1999, carrier's liability for damage to checked baggage is presumed unless it proves that the damage results from a defect in the baggage itself. According to art. 17.2. for baggage not delivered, the carrier is liable if the damage results from his own fault or that of his

[1]See in argument: par. 45 of LuftVG Haftungfür Personenschiiden which is affirmed that: "(...) Wird ein Fluggast durch einen Unfal! an Bord eines Luftfahrzeugs oder beim Ein-oder Aussteigen getotet, korperlich verletzt oder gesundheitlich "geschiidigt, ist der Luftfrachtführer verpflichtet, den daraus entstehenden Schaden zu ersetzen it is generally accepted that passenger liability under § 45 LuftVG would be applied for the principle of § 253 BGB (...)". The French Chamber appeal in case cFloyd has observed that: "(...) When the (Floyd) Court sought to examine whether French law in 1929 allowed parties to recover for purely mental injuries, the Court limited the scope of French materials that it would consider as part of its analysis; the Court refused to rely on French judicial decisions that did not involve a mental injury caused by flight or shock (...)". See also art. 124 of Chinese Civil Aviation Law of 2004: "(...) The Carrier shall be liable for the death or personal injury of a passenger, if the accident took place on board the civil aircraft or in the course of any of the operations of embarking on or disembarking from the civil aircraft; provided that carrier is not liable if the death or injury resulted solely from the state of health of the passenger. The Supreme Court's Interpretation on Several Issues in the Application of Law Concerning the Trial of Cases about Reparation for Physical Injury (...) Where the claimant brings a suit ta require for compensation for property damage and mental in jury due to the infringement of rights ta life, health (…) the people s court should accept the suit (...) Where a tort results in mental in jury in which, however, non serious us consequences exist, and the plaintiff! demands compensation for mental in jury, the people's court, general/y, shall/ not favor such a claim. Alternatively, the people's court may order the defendant ta cease infringements, rehabilitate the reputation of the victim, eliminate the ill! effects, and extend of apology ta the plaintiff! Where a tort results in mental in jury and serious consequences, according to the requirement of the plaintiff!, the people 's court may order the defendant to pay the compensation for mental in jury, except ordering the defendant ta cease infringements, rehabilitate the reputation of the victim, eliminate the its effects, and extend of apology to the plaintiff (...) A person who is liable in compensation for damages in accordance with the provisions of the preceding Article shall make compensation therefore even in respect of a non pecuniary damage, irrespective of whether such in jury was to the person, liberty or reputation of another or to his property rights (...)". The Corean Civil Code in art. 751 declares that: "(...) A person who has injured the person, liberty (…) of another or has inflicted any mental anguish to another person shall be liable to make compensation for damages arising therefrom (...)".

employees or supervisors. It would appear that the burden of proving the damage is borne by the passenger. It should be noted that the passenger can exercise the rights deriving from the transport contract if twenty-one days have passed from the date on which it should have arrived according to art. 17, par. 3.

The content of the burden of proof is therefore expressly identified by art. 21.2[1]. This provision, approved after serious disagreements in international negotiations, is very significant of the will of international legislator to definitively want to get rid of the institution of debt limitation for the damages to the person of passenger[2].

Maintaining the provision of the release evidence in terms originally expressed by the Warsaw Convention (art. 20) could have meant, the possibility of exposing carrier's liability system to "risks" of a possible rethinking of the jurisprudence regarding the effective content of the release document contemplated by art. 20 of the Warsaw Convention and related criteria. Preoccupation is not entirely unreasonable considering that the reasons for this jurisprudential orientation must be identified in the need to safeguard the primary interests of the transport user, such as safety, health and physical integrity, in the presence of limits absolutely inadequate monetary policies.

Carrier's liability for delayed baggage transport is regulated in art. 19 where it is established that the carrier will not be liable for damages resulting from delay (Van Dam, 2011, pp. 260ss; Neligan, 2006, pp. 124ss) in the event that it proves that he

[1]The exclusive or concurrent fault of the injured party, which excludes the carrier's liability in the event that such fault has been the exclusive cause of the damage, while it limits it proportionally if it has been a contributing cause. Its effectiveness is undisputed in civil law systems, for which it is common ground that the causal contribution of the injured goes to reduce the damage items, while it raises some problems in common law systems, informed by the principle of the proxima cause, which postulates the integral responsibility of the subject to which the cause closest to the damage refers, even if it is only a contributing cause in competition with others; to avoid the assertion of the irrelevance of the causal contribution of the injured party with respect to the damage to be compensated, this provision was introduced and preserved in the uniform discipline.

[2]Article. 21.2 of the new Convention, differently from the analogous provision of Regulation 2027/97 (article 3.2), which limited itself to recalling the content of the evidentiary burden placed on the carrier by the original text of the art. 20 of the Warsaw Convention (adoption by the carrier and its employees of all the measures necessary to avoid the damage or that it was impossible for them to adopt), identifies two very rigorous exoneration hypotheses whose demonstration is required in terms of positivity: a) the proof that the damage that has actually occurred (such damage) was not due (was not two to) to negligence or other unlawful act or omission of the carrier or its servants or agents; b) proof that the same damage was due exclusively (was solely due to) the negligence or other illicit omission of a third party. In both cases, obviously, the standard requires the identification of the cause of the damage by the carrier, with the consequence that damage from an unknown cause must necessarily fall on the carrier itself.

and his servants and agents have taken all the measures that could reasonably be taken to avoid the damage or that it was impossible to adopt.

Liability for loss, damage or delay is limited to 1000 DSPs for each passenger, which is understood to refer to both checked and unchecked baggage (Sergeevna Kasatkina, 2015, pp. 96ss). Article 17.4 provides that if not otherwise specified, the term baggage has the meaning of both checked and unchecked baggage. The compensation limit will not be applied if the passenger proves that the damage is derived from intent or reckless and conscious conduct by the carrier or its employees or officers acting in the performance of their duties, or issues a special declaration of gratitude paying for possibly paying a fee supplement. In this case, the carrier must reimburse the damage up to the declared sum unless he proves that it is higher than the actual interest in the redelivery.

In EU law according to art. 3 of (EC) Regulation n. 889/2002 it is established that EU air carrier responsibility in relation to passengers and their baggage is governed by the Montreal Convention. In the following art. 6, subparagraph 1, the Regulation specifies that all air carriers that sell air transport services in the Community must ensure that a summary of the main rules on liability for passengers and their luggage is made known to passengers at all points of sale, including sales by telephone and internet. According to subparagraph 2 it is established with specific reference to baggage that in addition to the aforementioned obligation to provide information, carriers must disclose in relation to the air transport services provided or purchased in the Community, the limit applicable for such flight to carrier's liability in the event of destruction, loss or damage to baggage and a warning that baggage of a value exceeding this amount must be declared to the airline at the time of legislation or be fully insured by the passenger before the flight. For the carrier a presumed responsibility for damages deriving from the failure to carry out the transport of the passenger or his baggage, a presumption that can be overcome by the proof, provided by the carrier that he and his employees and supervisors have taken all the necessary and possible measures, according to the normal diligence to avoid the damage or that it was impossible for them to adopt them. As previously indicated for the transport of baggage for which the carrier will be considered responsible for the same until the time of return the passenger including the period in which the baggage has been temporarily assigned to a ground assistance operator or to another auxiliary.

7. Compensation Limit of the Air Carrier

The compensation was subject to a progressive substantial change which led to its exclusion due to injury to the person of the traveler in order to ensure adequate protection of goods and rights with primary value. When the compensation obligation of the carrier refers to personal injury, the highest good of life and physical integrity deserves a higher level of protection than that of the economic interests of the carrier.

As regards the constitutive fact of the indemnifiable damage, the Montreal Convention speaks of an "accident"[1] which occurred on the aircraft, or in the period of time between boarding and disembarking of the passenger. The formula used lends itself to the interpretative doubts that it had already aroused under the validity of the Warsaw system, referring therefore to the jurisprudential and doctrinal elaboration of the past (which in any case have never reached a uniform reading of the question), can be defined restrictively as "accident" anything beyond the normal, usual and expected performance of aircraft operations, also affirming carrier's liability for the harmful consequences of remedies prepared by the crew for inconveniences transport.

The reading of the "lésion corporelle" is more problematic: if there is no doubt that it is desired elastic and therefore can follow the evolution of medical science, it is more difficult to expand it to include pure psychic damage. On the physical damages, nothing quaestio, as also, in the most recent also foreign jurisprudence, on the psycho-somatics; the problem of compensation refers to the mental injury in which the dichotomy of psychic damage is reflected between psychic damage resulting from physical injury and "autonomous psychic damage", that is not consequent to a physical injury. In fact, if the psychic damage is causally related to the physical injury suffered by the passenger, nothing else would represent if not

[1]The etymology of the term accident contemplates the reference to an unusual event, which from the outside affects and damages the traveler. There does not seem to have to be another criterion of interpretation, such as the suddenness and unpredictability of the external occurrence to the passenger, elements that, otherwise, should be subject to probative burden on the part of the passenger and which, instead, more properly enter into the game of proof that the carrier is required to provide to exempt from liability pursuant to articles 20/21 of the Warsaw Convention, or 19 and following of the Montreal Convention. What is deemed indispensable for the applicability of uniform international legislation is that the accident occurs when the passenger is on board the aircraft or is engaged in embarking and disembarking operations; this is how the first paragraph of the art is expressed 17, which mentions the need that "the accident (...) took place on board the aircraft or in the course of the operations of embarking or disembarking".

the dynamic moment of the same, the development over time of the biological damage. In the case of autonomous psychic damage, although we are dealing with undoubtedly unjust damage, we must try to bring it back into other damage claims elaborated by the jurisprudence, such as moral damage or the very new existential damage. Precisely in order to preserve the balance of interests, the contracting states have agreed that, in certain hypotheses-described in art. 22 of the Convention, and among which, in the transport of baggage, also the damage deriving from "destruction, loss, deterioration or delay" (Job, Odier, 2004, pp. 3ss; Dagtoglou, 1994, pp. 90ss; Kassim, Stevens, 2010; Kinga, 2013, pp. 404ss; Koning, 2008, pp. 320ss; Damar, 2011, pp. 306ss)-the carrier can benefit from a limitation of responsibility, and that, however, the existence of these limits must necessarily refer to the entirety of the damage suffered by each passenger in each different hypothesis, regardless of the nature itself of the damage caused to it. In the end, we can say that the figure of existential damage also testifies to the desire to extend the reconstruction of compensation if the injury to legal interest, or damage-event to the hypothesis of violation of other fundamental rights of the person constitutionally protected.

Of the same orientation line is CJEU case C-63/09, Walz of 6 May 2010[1]. It highlights that the provision of a limitation of compensation-in the mandatory hypotheses in which it operates-allows, at the same time, passengers to obtain easily and quickly the indemnity to which they are entitled, and the carriers not to have to bear any extremely burdensome compensation charges, as well as difficult to estimate and quantify, as well as potentially susceptible to compromising their economic activity.

Beyond this problem, the abstractly compensable damage is patrimonial, biological and moral[2], which can be compensated both to the passenger (who can transmit the

[1]ECLI:EU:C:2010:251, I-04239.

[2]In reality, there is no sufficiently objective criterion for assessing moral damage. It requires a fair appreciation on the part of the judge of all the circumstances of the specific case to make the determination more subjectivising, provided that the liquidated amount is not merely symbolic. Often the judges resort to standard practices aimed at determining the moral damage on certain mathematical bases based in the case of personal injuries on the fraction of the amount paid as compensation for biological damage. The moral damage constitutes an injury to the moral integrity of the productive human person of a transient suffering and worthy of full and integral compensation. It is also a damage whose compensation requires personalization to the specificity of the specific case: ex if the judicial liquidation of a fraction as compensation for non-material damage is not illegitimate if the judge has taken into due consideration these peculiarities in order to reach however to an integral repair, only coincidentally coinciding with a fraction of the biological damage.

relative credits by inheritance) and to the next relatives who, by virtue of the claim, suffered an appreciable damage to assert its own jure.

The Warsaw Convention has established according to art. 22 the limit to 125,000 gold francs per passenger high from the subsequent Hague Protocol to 250,000 gold francs with the specification that the amount of legal fees was added to this limit. The United States of America denounced the Warsaw Convention above all because they considered the compensation limit to be too modest and that it could not guarantee adequate protection for transport users. With the Montreal agreement of 4 May1966, with which the carriers voluntarily increased the limit to US $ 58,000, even if limited to flights departing from the arrival or stopover in the United States. Later, the 1971 Guatemalan Protocol, which never came into force, set the limit at 1,500,000 gold Poincarè francs, to which were added legal fees (KIM, 2003, pp. 10ss)[1].

[1]The Legal Committee drafted, in its Draft Report, the key points of the revision: 1. Objective responsibility, even in the case of acts of war and sabotage; 2. Maximum amount quantified at US $ 100,000; 3. Automatic adjustment of the ceiling of US $ 2,500 per year, for an initial period of twelve years, but with the possibility of intermediate revisions if deemed necessary; 4. Absolutely insurmountable limit in any case; 5. Possibility of granting the victory in the costs to the plaintiff, if the carrier had not promptly proposed to transit before the dispute began; 6. Acceptance of the so called fifth jurisdiction (plaintiff court); 7. For the damages caused by delay, it would have been answered according to presumed fault criteria, with ceilings to be drawn up during the diplomatic conference; 8. In any case, the carrier's right to take action against liable third parties (or jointly responsible) remained unaffected. The responsibility of the carrier was structured on objective and absolute bases, with an insurmountable limit, whatever the circumstances underlying the responsibility; a periodic update of the limit figure was also envisaged. Finally, in the definitive text of the Protocol the American requests for the creation of a "supplementary compensation scheme" and the possibility of referring to the plaintiff's court (so-called "fifth jurisdiction") were accepted. Strict liability, an exception with respect to the traditional canon of liability for negligence (even if presumed), was already rooted in transport law (e.g. legislation at the end of the 19th century, Swiss and Prussian, on rail transport) and had already made its entry in the air transport of people thanks to the Montreal Agreement of 1966, but here, for the first time, a diplomatic conference sanctioned the overcoming of the rejection, for a long time perpetrated at international level, of the objective liability. In this regard it is referred to in the so called "Sunset of the dogma of the will" to justify such a radical change of direction: according to the doctrine that sustained this "sunset", civil liability was to be seen as devoid of any sanctioning function, and solely in terms of compensation, according to the aforementioned theory of business risk, which shifted the damage to those who derived economic benefits from an activity (cuius commoda eius incommoda). The imputation of the damage itself, therefore, would no longer be based on the unlawfulness of the conduct of the carrier or its supervisors, but would have been linked to other criteria, thus proving that the civil liability had: "(...) a single purpose indefectible, that is that of the compensation of the damage (...) ", according to the doctrine it was gone toward a general system in which the imputation for fault would have been an exception in comparison to the rule of the objective liability. Also contributing to this orientation was the non-secondary observation that, in a technological context now so advanced, often no reproach could even be made against the injuring party, a moral requirement that was, instead, at the base of a

National currencies disbanded from gold in 1971 and this put the system of compensation limits set by the Warsaw Convention and Hague Protocol based on the gold standard into great crisis. The limit was excessively susceptible to oscillation and uncertain, forcing national judges to refer to the actual value of gold, rather than to a unit no longer linked to gold. The Protocols n. 1 and 2 of Montreal of 1975 fixed the limits set by the Warsaw system in special drawing rights, respectively, 8.300 and 16.600 for each passenger. With Protocol n. 3 not in force the limit was increased to 100,000 SDRs for each passenger while Protocol n. 4, in force in Italy, left the limit fixed at the values established by the Hague protocol, that is to say 250,000 gold francs[1].

For example, Italy with the law of 26 March 1983, n. 84 replaced the Poincarè gold franc with DSP, setting the limit at 16.600 SDRs, i.e. the same amount established by the additional protocol no. 2 of Montreal thus giving rise to a significant lowering thereof. The carrier had to ensure its own civil liability for a ceiling of at least 100,000 SDRs with a suitable certified company according to art. 3, 2nd subparagraph. Certainly not a secondary effect of the pronunciation in question would have been to accentuate the possibilities of forum shopping. As a victim, assisted by a lawyer at least vaguely capable, he would not have chosen to convene the carrier if he could be, abstractly, forced to pay the entire damage, regardless of its quantification? But as just mentioned, if such an event was to be considered penalizing for Italian companies, but nothing more since this law had been set by the Italian legal system, the situation was different for foreign companies: not linked to the Italian state by anything else of the fact of making the connections there, they would have found themselves faced with the choice whether to accept the “Italy risk” or abandon the routes managed.

The elimination of the limitation of air carrier's debt for personal injuries has seen

sanctioning function of compensation, so as interpreted in systems of liability for fault. The requirement of guilt was defined as a “historical rudiment”, a fictitious moral criterion on which the choice had to be based between who, damaging or damaged, would ultimately have to bear the damage. If, therefore, no moral reproach could have been made against the acting subject, it would have been illogical to continue to maintain that the threat of liability could have dissuasive effects on the carrier, to the point of inducing him to behave even more diligently, especially if the acts performed by him also of a public utility nature, such as air transport, once blocked they would have brought more serious social damages to the community. Here, then, came to understand how the business risk theory, especially in fields such as aeronautics, could allow damage caused by legitimate acts in itself to be placed on the agent, who could have calculated the costs in the company's financial statements, through the stipulation of insurance coverage.

[1]C-257/14, Corina van der Lans v. Koninklijke Luchtvaart Maatschappij NV of 17 September 2015, ECLI:EU:C:2015:618, published in the electronic Reports of the cases.

the decisive moment in the aforementioned internationally renunciation limitation agreements according to IATA agreement of 1995 (IIA), Miami agreement (MIA) and ATA agreement (IPA).

The principle of debt limitation has always been motivated by economic requirements, allowing the beneficiary to predetermine the risk to which his assets could be exposed in the hypothesis of ascertaining his responsibility in causing damage. But while in the maritime transport sector debt limitation was affirmed, at first, only in the transport of things, in the air transport, relying on the same mainly economic motivations, it also established itself in the transport of people. The intent was to devise tools capable of favoring the development of an industrial sector under development at the time of the signing of the Warsaw Convention. Previously similar requirements had led the uniform legislator to impose the limitation of the debt and therefore of the risk in the railway transport (I refer to the Berne Convention of 1890).

In the sixties and seventies the air transport sector showed its propensity to identify a balanced composition of the interests of all those involved in the transport of people in the institution of objective liability accompanied by a potentially insurmountable debt limit. On the one hand the sphere of carrier's economic initiative was safeguarded by restricting the band of compensable damage within certain limits. On the other, there was an insistence on the need to protect the weak subject, the passenger, by setting socially adequate limits and accompanied by an objective criterion of responsibility imputation.

The air transport sector has always expressed this natural tendency precisely in the proposal and discussion of the worldwide revision of the Warsaw Convention. Audit that has always been deemed to have to be carried out or with the introduction of forms of objective liability, with a corresponding increase in the extent of limitation towards values such as to guarantee the adequacy of the restaurant for the injured party, or with the preservation of liability for fault, although presumed, with the definitive abolition of debt limitation.

The progressive intolerance towards forms of debt limitation in the air passenger transport sector, where the need to guarantee an adequate recovery of the prejudice caused to primary interests, such as physical integrity and health, appeared to be more intense and urgent, entailed the succession of numerous interventions of an integrative nature of the Warsaw Convention, both in the field of uniform law and in EU and national law.

For transports carried out by Community carriers, Regulation (EEC) no. 2027/97 modified by Regulation (EC) n. 889/2002 which eliminated the compensation limit in the event of liability of the carrier for death or personal injury of the passenger even if an unjustified difference in treatment with respect to non-EU carriers ensued because the latter continued to enjoy the benefit with the sole obligation of expressly inform passengers of the non-application of the community rules on liability and compensation according to art. 6, par. 3 of the Regulation.

1999 Montreal Convention that complies with Regulation (EC) n. 889/2002 has sanctioned with reference to international air transport the definitive abolition of the institution of the compensation limit. Instead, when it comes to damage caused by delay, the Montreal Convention maintains the operation of the limit on a par with what happens to damage to baggage, setting it at 4,150 SDRs.

With the affirmation of the limitless liability of claims for accidents to the passenger the problem of conventional derogation of the limit and that of the forfeiture of the benefit for the carrier that in the past have dictated the attention of aeronautical law scholars and operators they have lost interest outside the specific subject of damages due to delay in the execution of the transport and baggage.

The limit cannot be waived in favor of the carrier while it is in favor of the passenger according to art. 25 of the Montreal Convention. A further innovation was introduced by the Montreal Convention which consists of the provision of the possibility for the carrier in the absence of a specific obligation to refuse to conclude the transport contract with the passenger according to art. 27 in order to avoid incurring unlimited liability.

The Montreal Convention provides for the possibility of forfeiture of the benefit of the limit exclusively for damage caused by delay in the transport of persons[1] and

[1]In conclusion, in order to give legal relief to the delay and to make the liability of the air carrier pursuant to art. 19 Warsaw and Montreal Convention, it is necessary to carefully evaluate, firstly, the time indicated by the same for the transport in question, and secondly other elements such as the extension of the route, the means used, the amount of traffic or the existence of organizational problems caused by employee strikes. Only such an organic evaluation can allow the interpreter, or more frequently the judge, to overcome the gap in the uniform text deriving from the absence of a precise definition of the concept of delay mentioned in the art. 19. It has already been pointed out that the delay envisaged by art. 19 The Warsaw and Montreal Convention is the delay in air transport, and must therefore be referred peacefully to the time of arrival of the passenger, baggage or goods with respect to the time that can reasonably be "imposed" on a diligent carrier. It goes without saying that the moment of departure becomes important only for the fact that an anticipation of the embarkation with respect to the scheduled time must be necessarily avoided, for obvious reasons, but it must not be considered in relation to the concept of delay of which 19, if only because a delay in departure may

for the destruction, loss, deterioration or delay in the transport of luggage if proof of the derivation of the damage is provided from zones or omission of the carrier or of one of his supervisors committed with the intent to cause it or recklessly and in the knowledge that it would probably have resulted in damage. Consequently, it does not operate in the event of death or personal injury suffered by the passenger, as the limit no longer exists.

The different orientation of the jurisprudence poses the problem to the objective or subjective criterion that must prevail in the evaluation of the courageous and conscious conduct of the carrier. The jurisprudential thesis that accepts the first criterion affirms the necessity of an evaluation according to the id quod plerumque accidit, that is the mere knowledge of the probable occurrence of the accident while another position that favors the second criterion supports the need to evaluate the actual knowledge of the probability of damage. In reality, the previous doctrine conformed according to this orientation, recognizing the difficulties inherent in evaluating vector's animus.

The compensation limit applies in relation both to the action based on the contractual relationship between the passenger and carrier and to the action based on the concurrent non-contractual liability of the latter pursuant to art. 29 of the Montreal Convention and art. 24, par. of the Warsaw Convention as amended by Additional Protocol no. 4 of Montreal. The limit applies to the actions based on the non-contractual relationship between the passenger and carrier's auxiliaries who acted in the performance of their duties according to art. 30 of the Montreal Convention and art. 25A of the Warsaw Convention introduced by the Hague Protocol.

The system recalled of the compensation limit accepted by the Montreal Convention of 1999 is also applied within the EU by virtue of Regulation (EC) n. 889/2002. The insurance obligation is reiterated, imposing on the airlines the total coverage of the compensation, with a slightly different formula from the previous one (we speak here of "adequate level" and no more than "reasonable limit") which still leaves a, albeit lower that previously, margin of discretion. In the plot of attention that the Community legislator reserves for the protection of interests of individuals, the right that they have to fully know their rights and faculties could not fail to emerge, especially with reference to the liability of the air carrier; the

well be recovered by the air carrier, especially in the cases in which the flight foresees intermediate stopovers.

right of passengers to information on the regime applied to the flight for which they purchased the ticket is expressly established, by any means[1].

8. Possibility of Psychic Damage

If, on the one hand, it appears evident that the person of the traveler is struck not only in the case of death or strictly physical injuries. Also in the hypotheses in which an event outside it acts on his soul in order to bring him mental disorders, is also unquestionable that from a simple reading of art. 17 of the Warsaw Convention, then substantially transposed into the analogous art. 17 of the Montreal Convention. The international air carrier would seem to be exempt from the damages deriving from a simple psychic trauma, that is from a mental shock not strictly connected to a physical injury. In favor of the exclusion of compensation for mental damage based on the literal data of art. 17 first and foremost, there would be considerations related to the need for protection of the aeronautical industry, particularly felt at the time of drawing up the Warsaw Convention, on the basis of which the legislator would have deliberately limited the indemnifiability of damages suffered by passengers to those of a physical nature.

To support the limitation of the possibility of acting against the carrier for mental damages there would also be a normative datum, represented by art. VIII of Protocol n. 4 of Montreal of 1975, later merged into art. 29 of the Montreal Convention, pursuant to which, in the international carriage of passengers, baggage and cargo, any action for the purpose of compensation for "damages", in whatever capacity it is founded, based on the Montreal Convention itself or a contract or unlawful act, can be exercised only according to the conditions and limits of responsibility provided for by the Convention itself. And, as far as some have observed that the notion of "damages" must be considered an index of a decoupling of the foundation of the action from the reply of articles 17, 18 and 19 of the Montreal Convention and the particular area of damage traced therein-and

[1]See the relevant EU legislation on tickets, in particular: Regulation (EC) n. 80/2009 of the European Parliament and of the Council, dated 14 January 2009, concerning a code of conduct for computerized reservation systems and repealing Regulation (EEC) no. 2299/89 of the Council (OJ L 35, 4.2.2009, pp. 47-55); the Regulation (EC) n. 1794/2006 of the Commission, of December 6th 2006, which establishes a common tariff system for air navigation services modified by Regulation (EU) n. 1191/2010 of 06 January 2011.

therefore, with regard to art. 17, the bodily injury of the carrier-it is also quite clear that through the aforementioned rules the uniform legislator wanted to mark the area of indemnifiable damage events covered by the system of uniform law and then of the same provisions of Protocol n. 4 of 1975 and art. 29 of the Montreal Convention.

Article 29, moreover, would have precisely the purpose of avoiding the exercise of damage actions in circumvention of the uniform international legislation through an action in tort, rather than in contract, that is founded on an alleged liability of the consumer rather than a contractual one.

On the other hand, a possible extension of the area of compensation for damage to those of a purely mental nature would render meaningless the references made by the Montreal Convention to harmful events expressly "typed", that is to say, as regards the first paragraph of art. 17, death and bodily injuries of the passenger, rather than personal or mental injuries.

The opposite interpretation, on the other hand, is based on the finding that the failure to mention the mental damage in the provision in question could not, in itself, serve to exclude the compensation of the same, due to the fact that the Warsaw and Montreal Conventions do not they would claim to regulate any issue relating to air transport, but on the contrary to create a unitary system of rules on the matter. In essence, the fact that the psychological damage is not expressly mentioned by art. 17 of the indemnifiable damages, cannot, in itself, constitute a decisive element for the carrier to answer or not, and therefore the answer to this lacuna requires an accurate and scrupulous process of exegesis of the will of the uniform legislator.

Regardless of the interpretation one wishes to assign to the literal data of art. 17, it is reasonable to believe that the Montreal Convention does not include an exclusive cause of action, in the sense that it should leave room for individual national laws regarding damage events that are not included among those explicitly mentioned by the same art. 17 as subject of uniform legislation. However, even in the hypothesis in which the possibility of acting for the compensation of damages of a mental nature must be admitted by resorting to national regulations (or, at least, to those that allow to exercise this faculty), it cannot be done unless the injury is detected which would be borne by air transport passengers if the causative event of only psychic damage were to be radically excluded from the scope of the Montreal Convention.

In light of this, one wonders-and the writer is definitely inclined to provide an affirmative answer to this question-whether it is possible and appropriate to interpret "in a broad sense" the text of art. 17 of the Montreal Convention (and already of Warsaw), in order to include in the bodily injuries also only psychological injuries, and this also in order to raise the uniformity of treatment of passenger damage, and at the same time avoid a fragmentation of the discipline of carrier liability.

The "extensive" interpretation of the provision in question could also be endorsed by a significant historical consideration, inherent to the fact that, at the time of the drafting of the Warsaw Convention, the psychic traumas, among which, par excellence, are to be mentioned those linked to terrorist incidents, more frequent in recent decades they were not perceived as worthy of protection. This is an "evolutionary" solution, which aims to reconstruct the will that would probably have been expressed by the uniform legislator of 1929 if he could have known about the frequent and fearful terrorist episodes occurred in air transport in the following decades, and instead almost unknown at the time of the drafting of the Warsaw Convention.

By adhering to this orientation it could be concluded that the provision of art. 17 of the Warsaw Convention includes any trauma, both physical and mental, occurring to the passenger during an international air transport or during embarkation and disembarkation operations. It is, however, a "sin" that the jurisprudence, especially the US, which has acted as a spokesman for the aforementioned interpretation of the uniform international law, has "debased" the same, considering that the claim for compensation for psychological damage must, however, be anchored to a national law provides a cause of action, that is, that recognizes the indemnifiability of the damages in question.

If, however, the "extensive" interpretation based on the aforementioned historical reasons can undoubtedly be considered acceptable with regard to the Warsaw Convention, it cannot be denied that it appears difficult to sustain if the reference is the Montreal Convention of 1999 (Batra, 2003, pp. 20ss).

In fact, the lack of consideration of psychic injuries in art. 17 of the Montreal Convention can no longer be ascribed, as some decades ago, to the failure to consider them as a possible consequence of air transport operations. The fact that the uniform legislator of 1999 has expressly contemplated only the death or bodily injuries of the passenger to trace the scope of application of the conventional text

could, therefore, apply to exclude from this sphere the productive events only of psychological trauma, the compensation of which would remain anchored-as has been pointed out above-to the particular national laws indicated by the conflict rules of the court having jurisdiction. In essence, only the alteration of one or more passenger organs could fall within the objective scope of application of the new uniform international regulation of air carrier liability.

To confirm this assumption there would also be the consideration that in the first phase of Montreal Convention preparatory work, the editors did not take sides in favor of the absolute irreversibility of the damages resulting from the pure mental injury, but in a second at the time they decided to radically eliminate any reference to the reparation of such damages, as if to confirm the will to address the interpreter in a univocal determination of the meaning of the bodily injury expression, to be conducted according to the notions and rules of the lex fori, to which the Convention would leave the task of delimiting the compensation of harmful consequences.

As far as has been explained up to now, it cannot be doubted that the problem of the compensation of psychological damages represents a question of a solution that is anything but easy, whose scope, moreover, has been amplified, so to speak, following the approval of EC Regulation 2002/889, amending the previous EC Regulation n. 2027/97, with which the uniform international law of Montreal has been extended, as regards the liability of the carrier towards the passengers, also to the transports carried out within member states.

In the text of art. 6.2 of the aforementioned EC Regulation no. 2027/97, as reformed by the subsequent EC Regulation n. 889/2002, it is specified that the air carriers have the obligation to deliver to users of the community air transport services a “written indication” containing a series of information, among which is included “the applicable limit for such flights to the responsibility of the carrier in the event of death or injury”, without, however, specifying the type of injury to be referred to.

The question therefore arises as to whether the concept of “injury” can also cover traumas of a psychic nature, also due to the fact that, as an annex to the Regulation in question, there is a warning that, in the matter of “compensation in the event of death or injury”, “there are no financial limits of liability in case of injury or death of the passenger”, and it would therefore be reasonable to infer that the reference is also to mental ones. It is understood, however, that this warning has no perceptive

value, and therefore even in the hypothesis that it must be considered that the same can authorize the request for compensation for damages only of a mental nature, it could not in any case be used as a basis for any claim for compensation. In the absence of this warning, there is no imperative value, the prescription addressed to the air carrier in art. 6.2 to communicate to passengers the compensation limits in the event of death or injury is not, in conclusion, sufficient to extend the provisions of art. 1 according to which the provisions of the Montreal Convention apply to the liability of Community air carriers.

Furthermore, it cannot be overlooked that the original wording of Regulation no. 2027/97, governing, in art. 3, the assumptions in which the liability of the air carrier is not subject to any financial limit, mentioned, in addition to "death" and "injuries", the "personal" injuries suffered by passengers, thus leaving clearly the original intention of EU legislator to include psychic injuries among those subject to the liability system outlined there.

In light of this, it could be argued that the text of the new regulation in question has even compromised the possibility of extending Community's air carriers' responsibility, in application of Montreal Convention's provisions, also to the psychological damage suffered by passengers. Ultimately, the issue of whether or not compensation can be paid for psychic damage pursuant to art. 17 of the Montreal Convention is a topic that is still open and controversial, as well as being widely debated in international jurisprudence. If in favor of an "extensive" interpretation of art. 17 play of (sacrosanct) reasons of protection and guarantee of passengers, also inspired by the need to protect primary values such as the psychophysical integrity of the same, to the detriment of the same there are, at least, those related to the interpretation of the literal data of art. 17 of the Convention, which in the English version declares that only physical injuries (bodily injuries) can be compensated (Naboush, 2014).

As is known, from the beginning of January 2010, the one drawn up in Italian, whose art. 17 states that the carrier is liable for damage resulting from death or "personal" injury suffered by the passenger. This expressive choice cannot be considered casual, and indeed should be considered as a clear indication of the recent awareness of the uniform legislator to include within the scope of application of the responsibility of the international air carrier also the injuries of passengers who have the nature of a simple psychic collision (Folliot, 1999, 409ss; Whalen, 2000, pp. 12ss).

9. The Competition of Non with the Contractual Action

In the event that the damaging fact is unique, the problem arises of the concurrence of the contractual action with the non-contractual action that has occurred between the debtor of the transport obligation and damaged creditor as well as the Aquilian damage is a direct consequence of the breach of the obligation. If the subjects, actions and damaging facts were different each damage should be compensated autonomously according to the rules applicable to each one. It has been stated that the case in which the carrier-defaulting debtor causes at the same time both a contractual damage to his passenger-creditor and an extra-contractual damage to third parties outside the transport contract cannot be traced to the problem in question.

It has been stated that if between the parties to the transport contract there is an obligation for which one of being (carrier) is required to monitor the physical integrity of the other (passenger) and to prevent the occurrence of damaging facts for this. The injury of the injured person's subjective situation is a consequence of the breach of this obligation, not of the violation of the general principle of neminem laedere sanctio. Moreover, when the carrier signs the transport contract with the passenger, he does not commit himself as previously highlighted only to transfer the latter to destination but also assumes the obligation to transfer it unharmed. If the passenger suffers an injury in its physical integrity in the presence of a pre-existing obligation, the special, contractual or legal rules that apply to it. In addition, the obligation to protect passenger's safety regardless of whether or not it governs a subsidiary or legal discipline is essential and is related to the extent of the duty of collaboration of the transported person assessed on the basis of his or her less limited movement capacity. In air transport, the carrier's obligation to protect the physical integrity of the traveler derives from having entered into the contract and more specifically for the obligation to perform its service in accordance with art. 1385c.c. represented by the transfer. On the other hand, it does not appear to be possible in view of passenger limited ability to move and the almost always deadly consequences of an air accident that the carrier does not also have the obligation to protect the safety of the passenger alongside the main passenger transfer destination. Otherwise there would be a violation not only of diligence in the professional species that must be used by the debtor in the fulfillment of his obligations.

The question concerning the accumulation has been set for biological, moral,

psychic or existential damage consequent to non-fulfillment or delay in carrying out the transport in order to allow the passenger to act contractually to obtain compensation for damages deriving from delay or default and on an extra-contractual basis to obtain compensation for damage to one's physical or mental health as a result of the former.

The possibility was sustained for the injured party to obtain compensation for the damages in question through the exercise of the contractual action only. At present, the problem of admissibility of the competition between the two actions with regard to transports subjected to the uniform conventional legislation, appears to be devoid of concrete interest because, as previously stated, such legislation in art. 29 has equalized the effects of the two actions. The Montreal Convention of 1999 establishes that in the transport of passengers and baggage any compensation for damages, promoted for any reason under the Convention itself or on the basis of a contract or unlawful act or for any other cause can only be exercised under the conditions and within the limits of responsibility established by the same Convention.

Also for the transports falling within the scope of application of the Community Regulation n. 2027 as amended by Regulation (EC) n. 889/2002 which doubt has been advanced about the possibility of resorting to the competition between contractual and extra-contractual action due to the recall operated by art. 3 of the Regulation last cited in the legislation on carrier liability for passengers and baggage of the Montreal Convention.

10. Concluding Remarks

Under the limit of debt is a choice in favor of one of the parties, traditionally the carrier, which his responsibility contained within precise limits, allowing it to quantify his risk and, in this way, to be able to ensure it, redistributing it on the credit market, which the insurer has access to. In the Convention of 1929, in fact, the primary objective was the protection of the potential of a nascent industry, which however had already shown that it could revolutionize the conception of long-distance transport. To affirm today that, with the Montreal Convention of 1999 and the Community Regulations of 1997, 2002 and the following ones, the limit has disappeared also from the sphere of the transport of people seems not to be shared: in its metamorphosis, adaptation to the new sensibility and always more

sophisticated technologies, the institute has maintained its essence of distinction between two different imputation procedures of damage. In 1929 a subjective responsibility for presumed fault followed, a rectius could have followed, a criterion of redistribution of the damage based on intent and gross negligence. However, due to the difficulty of carrying out the proof required to obtain full compensation, the figure in question, gradually adapted, became a practically insuperable limit. In the Montreal Convention of 1999, the two-tier system does not present significant conceptual differences. It is still a threshold between an objective liability and a subjective one due to presumed fault. The substantial difference lies in the wide possibility of accessing even the highest level of compensation, proving its own damage. The carrier must prove that the cause of damage did not depend on its own negligence, or is attributable exclusively to the fact of the third party. If the structure of the vectorial responsibility, based on the tripod formed by imputation criterion, limit figure, insurance, is still almost the same, what is the novelty of the discipline to be sought for? This “essential tripod” is a neutral choice in itself, a tool that shapes itself on the contingent situation and on legislator's choices. In the pioneering phase of the flight it was essential to protect an infant industry from the disastrous consequences of fairly probable claims: the reasoning was linear, if the passenger chooses a vehicle that presents higher levels of risk than the others, he, buying the ticket, accepts these risks, not being able to complain in compensation for damages. Thus one saw in the passenger a kind of co-participant aware of the new industry, partially allowing it to bear even the negative consequences.

The nature of a uniform international law instrument will allow, within the EU, to eliminate some inconveniences already highlighted by the critics in the commentary of Regulation 2027 (I refer in particular to the field of application of the Regulation represented by the category of Community air carriers, those with an operating license pursuant to Regulation (EEC) 2407/92).

In general, we can affirm that for the air transport of people the entry into force of the Convention finally guarantees a substantial uniformity of the rules of responsibility. In fact, the feared risk of excessive, further fragmentation of the Warsaw system seems to be averted. Transportation as an international transport pursuant to art. 1 of the new Convention and other transports, to be intended as community transport, will be able to benefit from an almost identical liability regime. The differences, undoubtedly negligible compared to those existing today, may be eliminated in the review of Regulation n. 2027, already subject to the

revision of the Warsaw Convention by ICAO from recital n. 15 of the Regulation itself.

In the end, we can say that in any case, even disregarding the future formalization in a continuous and evolutionary integration of air carrier's responsibility, an important and fundamental intervention must be recognized both internationally and EU. An intervention that sounds like a further confirmation of the need to intensify measures to protect the regime and support users of air transport, and it will certainly be worthwhile to favor solutions on the point for greater protection of passengers rights and human life as a fundamental, inalienable and irreplaceable right.

11. Bibliography

Abeyratne, R., (2017). *Megatrends and air transport: legal, ethical and economic issues.* Berlin: Springer.

Adeyratne, R., (2016). *Rulemaking in air transport: a deconstructive analysis.* Berlin: Springer.

Ancel, M.E., Deumier, P. & Laazouzi, M. (2016). *Droit des contrats internationaux/Law of international contracts*. Paris: Sirey.

Andersen, B.N. (2009). Recent developments in aviation law. *Journal of Law and Commerce*, 71.

Arnold, K. & De Leon, P.M. (2010). Regulation (EC) 261/2004 in the light of the recent decisions of the European Court of Justice: Time for a change?. *Air and Space Law,* 34, pp. 92ss.

Arnold, K. (2013). EU Air Passenger Rights: Assessment of the Proposal of the European Commission for the Amendment of Regulation (EC) 261/2004 and of Regulation (EC) 2027/97. *Air and Space Law,* 38, pp. 403-438.

Assis De Almeida, J.S. (2008). A Convenção de Montreal de 1999 e o transporte aéreo internacional no Brasil/ The 1999 Montreal Convention and International Air Transport in Brazil. *Revista Brasileira de Direito Eeronáutico e Espacial/ Brazilian Journal of Space and Aeronautical Law*.

Aufner, M. (2005). Die neue EU-Überbuchungsverordnung/ The new EU overbooking regulation. *Zeitschrift für Verkehrsrecht/ Journal of Traffic Law,* pp. 66ss

Bäckdėn, D. (2019). *The contract of carriage: multimodal transport and uminodal regulation*. New York: Taylor & Francis.

Balfour, J. (2010). Airline liability for delays: The Court of Justice of the EU rewrites EC Regulation 261/2004. *Air and Space Law,* 34, pp. 72ss.

Balfour, J. & Van Der Wijngaart, T., (2016). Montreal convention: To whom is the carrier liable in the event of delay. *Air and Space Law*, 41, pp. 514ss.

Batra, J.C., (2003). *International air law.* New Delhi: Reliance, pp. 20ss.

Beale, H., Hartkamp, A., Kötz, H., Tallon, D. (1984). *Cases, materials and text on contract law.* Portland: Hart Publishing, Oxford & Oregon, pp. 282.

Benyon, F.S. (2013). *Services and the EU citizen.* Portland: Hart Publishing, Oxford & Oregon, pp. 22ss.

Bobek, M. & Prassl, J. (2016). *Air passenger rights. Ten years on*, Hart Publishing, Oxford & Oregon, Portland.

Bok Kim, J. (2001). Analysis on recent principle cases in U.S. Courts related to carriers. *Korean Journal of Air and Space Law,* 16, pp. 289ss.

Bokareva, O. (2015). Air passengers' rights in the EU: International uniformity versus regional harmonization. *Air and Space Law,* 40, pp. 3ss.

Brecke, K.H., (2012). Der Begriff des "Fluggastes" im Sinne der Verordnung (EG) Nr. 261/2004: Wer ist bei Geschäftsreisen anspruchsberechtigt-das buchende Unternehmen oder der reisende Mitarbeiter?/ The term "Passenger" within the meaning of Regulation (EC) No 261/2004: Who is eligible for business travel-the booking company or the traveling employee? *Zeitschrift für Luft und Weltraumrecht/ Journal of Air and Space Law,* 61, pp. 358ss.

Cachard, O. (2016). *Le transport international aèrien de passagers/ International air passenger transport.* Hague: Brill.

Canaris, C.W. (1989). Grundrechtswirkungen und Verhältnismäßigkeitsprinzip in der richterlichen Anwenudng und Fortbildung des Privatrechts/ Fundamental rights and the principle of proportionality in the judicial application and development of private law. *JuS*, pp. 161ss.

Caravaca, A.C. (2009). El Regolamento Roma I Sobre la Ley aplicable a las Obligaciones Contractuales: Cuestiones Escogidas (Rome I Regulation on law applicable to contractual obligations: selected topics)/ The Rome I Regulation on the Law applicable to Contractual Obligations: Selected Issues (Rome I Regulation on law applicable to contractual obligations: selected topics). *Cuadernos de Derecho Transnacional/ Transnational Law Notebooks,* 1, pp. 53ss.

Chassot, L. (2012). *Les sources de la responsabilité du transporteur aérien international: Entre conflit et complémentarité. La convention de Montréal et son interaction avec le droit européen et national/ The sources of responsibility of the international air carrier: Between conflict and complementarity. The Montreal Convention and its interaction with European and national law.* Zurich: Schulthess.

Cheng, B. (2004). A new era in the law of international carriage by air: From Warsaw (1929) to Monreal (1999). *International and Comparative Law Quarterly,* 55.

Cheng, C.J. (2107). *Studies in international air law. Selected works of Bin Cheng.* The Hague: Brill, pp. 671ss.

Cheshire, G.; North, P. & Fawcett, J.J. (2017). *Private international law.* Oxford: Oxford University Press.

Choi, J.C. (2005). The concept of accident under the Warsaw system. *Korea Society of Air and Space*

Law and Policy, 26, pp. 46ss.

Clark, L.S. (2001). European Council Regulation (EC) n. 2027/97: will the Warsaw Convention bite back? *Air & Space Law,* 26, pp. 138ss.

Clarke, M. & Yates, D. (2016). *Contracts of carriage of by land and air.* II ed. London & New York: Routledge.

Clarke, M.A. (2013). *Contracts of carriage by air.* New York: Taylor & Francis.

Clarkson, C.M.V. & Hill, J. (2011). *The conflict of laws.* Oxford: Oxford University Press, pp. 227ss.

Clausnitzer, J. & Woopen, H. (2008). Internationale Vertragsgestaltung–Die neue EG-Verordnung fur grenzuberschreitende Verträge (Rom I VO)/ International Contract Design-The new EC Regulation for cross-border contracts (Rome I VO). *Betriebs Berater/ Operating consultant,* pp. 1798ss.

Cobbs, L. (1999). The shifting meaning of "accident" under Art. 17 of the Warsaw Convention: what did the airline know and what did it do about it? *Air and Space Law*, 24, pp. 123ss.

Corona, V. (2012). La tutela del turista per inadempimento del trasporto aereo nel codice del turismo/ The protection of tourists due to non-fulfillment of air transport in the tourism code. *Revista Latino Americana de Derecho Eeronàutico/ Latin American Magazine of Eeronatic Law*, n. 7.

Cotter, C.E. (2014). Recent development in Montreal Convention litigation. *Journal of Air Law and Commerce*, 76, pp. 294ss.

Crawford, R.J. (2010). The system of international responsibility, in J. Crawford, A. Pellet, S. Olleson (a cura di). *The law of international responsibility*, Oxford University Press, Oxford, pp. 17ss.

Cunningham, M. (2008). The Montreal Convention: Can passengers finally recover for mental injury. *Vanderbilt Journal of Transnational Law*, 41, pp. 1043ss.

Czepelak, M. (2010). The law applicable to the contract of carriage under the Rome I Regulation, in *Czech Yearbook of International Law,* 1, pp. 47ss.

Dagtoglou, P.D., (1994). Air transport and the European Union: Essays and comments. *Kluwer Law International*. New York, pp. 90ss.

Damar, D., (2011). *Willful misconduct in international transport law*. Berlin: Springer, pp. 306ss.

Dempsey, P.S. (2004). Flights of fancy and fury of fury: arbitration and adjudication of commercial and political disputes in international aviation. *Georgia Journal of International & Comparative Law,* 32, pp. 231ss

Dempsey, P.S., Johansson, S.O. (2010). Montreal v. Brussels: the conflict of laws on the issue of delay in international air carriage. *Air and Space Law,* 35, pp. 208ss.

Dempsey, P.S. (2008). *Public international air law,* McGill, pp. 4-5, 66-67

Dupont-Elleray, M. (2002). La politique communautaire de l'aviation civile, da la libèralisation du trasport aèrien au ciel unique europèen/ Community civil aviation policy, from the liberalization of air transport to the single European sky. *Revue Française de Droit Aèrien/ French Journal of Air Law,* 56, pp. 354ss.

Ewers, H.J., Von Stackelberg, F. (1998). Verkehrspolitik/ Transport policy, in P. Klemmer (a cura di), *Handbuch der Europäischen Wirtschaftspolitik/ Manual of European Economic Policy,* München: C.H. Beck, pp. 1172ss.

Fearon, S.J. (1999). La nouvelle Convention de Montreal de 1999. Une vision américaine/ The New Montreal Convention of 1999. An American Vision. *Revue Française de Droit Aérien et Spatial,* 53, pp. 401ss.

Fenwick, M.; Siems, M. & Wrbka, S. (2017). *The shifting meaning of legal certainty and comparative and transnational law*, Oxford & Oregon, Portland: Hart Publishing.

Ferrari, F. & Leible, S. (2009). *Rome I Regulation: The law applicable to contractual obligations on Europe*. Brussels: Sellier.

Field, A. (2006). International air carriage, the Montreal Convention and the injuries for which there is no compensation. *Canterbury Law Review*, 12, pp. 238ss.

Finger, M. & Holvad, T. (2013). *Regulating transport in Europe*. Edward Elgar Publishers, pp. 59ss.

Folliot, M.G. (1999). La modernisation du systéme varsovien de responsabilitè du transporteur/ Modernization of the Varsovian system of liability of the carrier. *Revue Français Droit Aérien/ French Air Law Review,* 53, 409ss.

Ford Ferrer, G.C. (2012). Algo más sobre el transporte aéreo comercial de pasajeros y la responsabilidad por daño moral/ Something else about commercial passenger air transport and liability for moral damage. *Revista Latino Americana de Derecho Aeronáutico/ Latin American Journal of Aeronautical Law*, pp. 128ss.

Galand Carnaval, S. (2001). On pecuniary-loss under French law, W.H. Rogers (eds.) *Damages non pecuniary loss in a comparative perspective*. Berlin: Springer.

Garcimartín Alférez, F.J. (2008). The Rome I Regulation: Much ado about nothing. *The European Legal Forum,* pp. 62ss.

Gaudemet-Tallon, H. (2008). De quelques sources internationales du droit international prive: ordre ou desordre?, in P. Courbe, et al., *Le monde du droit: ecrits rediges en lhonneur de Jacques Foyer/The world of law: written in honor of Jacques Foyer.* Marseille: Presses Universitaires d'Aix-Marseille, pp. 477ss.

Georgiadis, E. (1953). Les responsabilites du commissionaire de trasport et de l'agence de voyage dans le transport aerien/ The responsibilities of the freight forwarder and the travel agency in the air transport. *Revue Française de Droit Aèrien/ French Journal of Air Law*, 8, pp. 16ss.

Giemulla, E., Schmid, R. & Mölls, W. (1992). European air law. *Kluwer Law International*. New York.

Giemulla, E.M. & Weber, L. (2011). International and EU aviation law. Selected issues. *Kluwer Law International*, New York.

Giesberts, L. & Kleve, G. (2009). Compensation for passengers in the event of flight delays. *Air and Space Law,* 34, pp. 293-304.

Giorgetti, C. (2012). *The rules practice and jurisprudence of international courts and tribunals.* The Hauge: Brill.

Goeteyn, G. (2007). EC Aviation scene: Major developments. *Air and Space Law*, 32, pp. 196ss.

Goldammer, Y. & Jurcys, P. (2008). Rome I Regulation on the law applicable to contractual obligations: The other side of the same coin?, *Justitia.*

Goldhirsch, B.L. (2000). The Warsaw Convention annotation. A legal handbook. *Kluwer Law International*, New York.

Goldhirsch, L. (2004). Definition of "accident": Revisiting Air France v. Sales, in M. Milde, P. Dempsey, H. Khadjavi, *Private international air law-cases and material,* vol. 1, McGill University, pp. 275ss.

Goldhirsh, B.L. (1988). *The Warsaw Convention annotated: A legal Handbook*. New York: Martinus Nijhoff Publishers.

Grassi, F. (2014). Air Passengers' Rights: Amendments to Regulation (EC) no. 261/2004. *The Aviation & Space Journal,* 13, pp. 55ss.

Grief, N. & Losy, A. (2010-2011). The Montreal Convention 1999: An increase in the limits of liability. *The Journal of Business Law,* 13, pp. 529ss.

Grönfors, K. (1956). *Air charter and the Warsaw Convention,* Martinus Nijhoff Publishers, The Hague, pp. 120 ss.

Guerreri, G. (1989). Overbooking, overselling and denial of boarding. *Annals of Air and Space Law,* 14, pp. 192ss.

Gutman, K. (2014). *The constitutional foundations of European contract law. A comparative analysis.* Oxford: Oxford University Press.

Havel, B.F. & Sanchez, G.S. (2014). *The principles and practice of international aviation law.* Cambridge: Cambridge University Press.

Hermida, J. (2001). The new Montreal Convention: the international passenger's perspective. One airline's merit is the other passenger's shortcoming. *Air Law,* 26, pp. 150 ss.

Hodges, H., (2018). *Law and corporate behaviour: Integrating theories of regulation, enforcement, compliance and ethics,* Hart Publishing, Oxford & Rregon.

Hodgkinson, D. & Johnston, R. (2016). *International air carrier liability, safety and security.* London & New York: Routledge.

Jarvis, R.M. & Straubel, M.S. (1994-1995). Litigation with a foreign Flavor: A Comparison of the Warsaw Convention and the Hamburg Rules. *Journal of Air Law and Commerce,* 60, pp. 911ss.

Job, A., Odier, D., (2004). La responsabilitè du transporteur aèrien de personnes pour cause de retard/ Liability of air carrier of persons for delay. *Revue Française de Droit Aèrien,* 58, pp. 3 ss.

Kassim, H. & Stevens, H. (2010). *Air transport and the European Union. Europeanization and its limits*. New York: Palgrave Macmillan.

Katsivela, M. (2012). Loss of the carrier's limitation of liability under the Hague -Visby rules and the Warsaw Convention common law and civil law views. *Australian and New Zealand Maritime Law Journal*, 26.

Katsutoshi, F. (2005). *On the Decision of December 26, 2003 by the Nagoya District Court-In re China Airlines Disaster of April 26, 1994, in Beyond Boundaries of Air and Space Law- Liber Memorials for Professor Masao Sekiguchi,* Tokyo: Yachio Shuppan, pp. 323ss.

Katsutoshi, F. (2001). Some legal aspects on the aviation law in Japan. *Korean Journal of Air and Space Law*, 22, pp. 334ss.

Kenfack, H. (2009). Le règlement (CE) n. 593/2008 du 17 juin 2008 sur le loi applicable aux obligations contractuelles (Rome I), navire stable aux instruments efficacies de navigation?. *Journal de Droit International,* pp. 4ss.

Kim, J.M. (2008). A study on the passengers liability of the carrier on the Montreal Convention. *Korea Society of Air and Space Law and Policy,* 29, pp. 32ss.

Kinga, A. (2013). EU Air passenger rights: assessment of the proposal of the European Commission for the amendment of Regulation (EC) 261/2004 and of Regulation (EC) 2027/97. *Air and Space Law,* 38, pp. 404ss.

Koller, I., (2013). *Transportrecht-Kommentar/ Transport Law Commentary.* Münich: C.H. Beck, pp. 1215ss.

Koning, I. (2008). Liability in air carriage. Carriage of cargo under the Warsaw and Montreal Conventions. *Air & Space Law,* 33, pp. 320ss.

Kwon, C.Y. (2016). Air carrier's civil liability for overbooking. *Korea Society of Air and Space Law and Policy*, 31, pp. 99ss.

Lando, O. & Nielsen, P.A. (2007). The Rome I proposed. *Journal of Private International Law,* 9, pp. 30ss.

Larenz, K. & Canaris, C.W. (2003). *Lehrbuch des Schuldrechts-Besonderer Teil/ Textbook of Obligation-Special Section.* Münich: C.H. Beck, pp. 377ss.

Laval, S. (2016). *Le tiers et le contrat-Étude de conflit de lois/Third Party and Contract-Conflict Study.* Brussels: Larcier.

Lawson, R. & Marland, T. (2011). The Montreal Convention 1999 and the decisions of the ECJ in the cases of IATA and Sturgeon–in Harmony or Discord? *Air and Space Law,* 36, pp. 99ss.

Le Goff, M. (1963). La Convention Complémentaire de Varsovie et la Conférence de Guadalajara/ The Warsaw Supplementary Convention and the Guadalajara Conference. *Revue Française de Droit Aérien et Spatial/ French Journal of Air and Space Law*, 20, pp. 20ss.

Leffers, C. (2010). The difference between cancellation and long delay under Regulation 261/2004: This is a commentary on the judgment of the European Court of Justice dated 19 November 2009 (Sturgeon v. Condor Flugdienst GmbH and Böck & Lepuschitz v Air France SA, joined cases C-402/07 and C-432/07). *Travel Law Quarterly.*

Leible, S. (2014). Art. 5 Rom I-VO, in N. Mansel, H. Hüsstege, *NomosKommentar BGB,* Vol. 6, Münich: C.H. Beck.

Leible, S. & Lehmann, M. (2008). Die Verordnung über das auf vertragliche Schuldverhältnisse anzuwendende Recht (Rom I)/ The Regulation on the law applicable to contractual obligations (Rome I). *Recht der internationalen Wirtschaft/ Law of the international economy*, 54, pp. 528ss.

Litvine, M. (1970). *Droit aérien/ Air Law.* Brussels: Bruylant.

Lowenfeld, A.F. & Mendelsohn, A.I. (1967). The United States and the Warsaw convention. *Harvard Law Review,* 81, pp. 497ss.

Magnus, U. & Mankowski, P. (2017). *Rome I Regulation.* Köln: O. Schmidt Verlag.

Magnus, U. (2006). Set-off and the Rome I proposal. *Yearbook of Private International Law*, 8, pp. 18ss.

Mankiewicz, R.H. (1989). From Warsaw to Montreal with certain intermediate stops. Marginal notes on the Warsaw system. *Air Law*, 38, pp. 240ss.

Mankiewicz, R.H., Schubert, F. (2007). Liability of air navigation services for air traffic delays and flight cancellations. *Annals of Air and Space Law*, 32, pp. 65ss.

Mankowski, M. (2017). *Rome I Regulation. Commentary.* Köln: O. Schmidt.

Mann, S. (2007). Airline liability-The Warsaw Convention-the fifth circuit rules that holding a passengers baggage for ransom is not actionable under the Warsaw Convention: Mbaba v. Air France. *Journal of Air law and Commerce*, 69, pp. 401ss.

Manuhutu, F. (2000). Aviation safety regulation in Europe. *Air & Space Law,* 25, pp. 265ss.

Mateesco Matte, N. (2003). *Traitè de droit aèrien aèronautique/ Aeronautical Air Law.* Paris: Pedone.

Mercer, A. (2003). Liability of air carriers for mental injury under the Warsaw Convention. *Air & Space Law,* 28, pp. 147ss.

Michaels, R. (2008). The New European Choice-of-Law Revolution. *Tulane Law Review,* 83.

Milde, M. (1989). ICAO Work on the modernization of the Warsaw system. *Air Law*, 14.

Milde, M. (1996). Warsaw Requiem or Unfinished symphony? *The Aviation Quarterly*, pp. 40ss.

Milner, A. (2009). Regulation EC 261/2004 and "Extraordinary Circumstances". *Air and Space Law*, 34, pp. 216ss.

Mirmina, S.A., (1996-1997). Overbooking and denied boarding compensation: The approaches of the European Union and United States. *Air and Space Lawyer,* 11, pp. 2ss.

Moll-Osthoff, K., (2013). Einführung in die sichere Lieferkette für Luftfracht/ Introduction to the secure supply chain for air freight. *Zeitschrift für Luft und Weltraumrecht/ Journal of Air and Space Law,* 62, pp. 368ss.

Moore, L. (2001). The new Montreal liability Convention, major changes in international air law: an end to the Warsaw Convention. *Tulane Journal of International and Comparative Law,* 9, pp. 224 ss.

Naboush, E. (2014). The meaning of bodily injury in air passenger litigation. *Annals of Air and Space Law,* 39.

Neligan, N. (2006). Air passenger rights. A new departure in European aviation law. *Commercial Law Practitioner,* pp. 124ss.

Nielsen, A.P. (2009). The Rome I Regulation and contracts of carriage, in F. Ferrari, S. Leible, *Rome I Regulation-The law applicable to contractual obligations in Europe.* Brussels: Sellier, Brussels, pp. 106ss.

O'hara, E.A. & Ribstein, L.E. (2008). Rules and institutions in developing a law market: views from the United States and Europe. *Tulane Law Review,* 83, pp. 2148ss.

Plender, M. & Wilderspin, R. (2009). *The European private international law of obligations.*, London: Sweet & Maxwell.

Polkowska, M. (2011). Air carrier liability in the passengers transport and protection of their rights. *Revista Europea de Derecho de la Navegaciòn Marìtima y Aeronàutica/ European Journal of Maritime and Aeronautical Navigation Law.*

Gama, R. De (2017). The exclusion for emotional farm to passengers in the Warsaw and Montreal Convention: Moving away from floyd, Siddhu and Piennar to the Stott case?, in *Potchefstroom Electronic Law Journal*, 20.

Ritorto, R. & Fisher, S.A., (2017). Exploring airline contracts of carriage and European Union flight delay compensation Reg. 261 (EU 261). A bumpy but navigable ride, in *Journal of Air Law and Commerce,* 79, pp. 562ss.

Rodiere, R. (1990). *Droit des transports terrestres et aérien/Land and air transport law.* Paris: Sirey.

Sanchez, S.G., Havel, B.F. (2014). *The principles and practice of international aviation law.* Cambridge University Press, Cambridge.

Scharpenseeel, M.F. (2001). Consequences of EU. Airline deregulation in the context of the global aviation market. *Northwestern Journal of International Law and Business,* 21, pp. 92ss.

Schmid, R. (2006). Die Berechnung der Großkreis-Entfernungen zur Bestimmung der Höhe des Ausgleichsanspruchs nach der Verordnung (EG) Nr. 261/2004 vom 11. Februar 2004/ The calculation of long-range distances to determine the amount of the right to compensation under Regulation (EC) No 261/2004 of 11 February 2004. *Zeitschrift für Luft-und Weltraumrecht/Journal of Air and Space Law,* 55, pp. 81ss.

Schollmeyer, E. (2004). Die Harmonisierung des Haftungsrechts im Luftverkehr zwischen Warschau, Montreal und Brussel/ The harmonization of aviation liability between Warsaw, Montreal and Brussels. *Praxis des Internationalen Privat-und Verfahrensrechts/ Practice of International Private and Procedural Law,* 24, pp. 78ss.

Schoonover, M. (2011). Oversold, delayed, rescheduled. Airline passenger rights and protection. *Washington University Journal of Law and Policy,* 37, pp. 36ss

Sergeevna Kasatkina, A. (2015). A carrier's liability and the contract for international air transportation of passengers and luggage: An analysis of international treaties and applicable domestic

law. *Czech Yearbook of International Law Transportation,* pp. 96ss.

Smirnoff, M. (1967). La crise de la Convention de Varsovie, Le point de vue des pays en voie de développement/ The crisis of the Warsaw Convention, The point of view of the developing countries. *Revue Française de Droit Aérien et Spatial/ French Journal of Air and Space Law,* 20, pp. 259ss.

So, J.S., Chang, K. (2013). A legal study on liability for damages cause of the air carrier: With an emphasis upon liability of passenger. *Korea Society of Air and Space Law and Policy,* 34, pp. 3ss.

Soames, T., Goeteyn, G. & Camesasca P.D. (2004). European aviation law: New wings unfolding. *Air and Space Law,* 29, pp. 115ss.

Staudinger, A., Art. 5 Rom I-VO, in R. Ferrari, E. M. Kierninger, P. Mankowski, K. Otte, I. Saeneger, G. Schulze, A. Staudiger, (2012). *Kommentar zum Internationalen Vertragsrecht/ Comment on International Contract Law,* Münich: C.H. Beck.

Staudinger, A. & Schmidt-Bendun, R. (2004). Neuregelung über Ausgleichs-und Unterstützungsleistungen für Fluggaste/ New regulation on compensation and assistance for passengers. *Neue Juristische Wochenschrift/ New legal weekly,* pp. 1897ss.

Stephen Dempsey, P., Jakhu, R.S. (2016). *Routledge handbook of public aviation law.* London & New York: Routledge.

Stewart, A. (2015). The Montreal Convention statute of limitations. A failed attempt at consistency. *Journal of Air Law and Commerce,* 77.

Stone, P. (2016). *EU private international law.* Cheltenahm: Edward Elgar Publishing.

Symeonidis, S.C. (2010). Party autonomy in Rome I and II from a comparative perspective, in K. Boele-Woelki, T. Einhorn, D. Girberger, S.C. Symeonidis, (a cura di), *Convergence and divergence in private international law. Liber amicorum.* The Hague: Eleven International Publishing.

TOSI, J., (2004). Droit des transports et droits des consommateurs de transport/ Transport law and transport consumer rights. *Études de droit de la consommation: Liber amicorum Jean Calais-Auloy/ Consumer law studies: Liber amicorum Jean Calais-Auloy*. Paris: Dalloz.

Truxal, S. (2016). *Economic and environmental regulation of international aviation.* London & New York: Routledge.

Twigg-Flesner, A.C. (2013). *The europeanisation of contract law: Current controversies in law.* London & New York: Routledge.

Twiggflesner, C.H. (ed.) (2010). *European Union private law.* Cambridge: Cambridge University Press,

Van Calster, G. (2016). *European Private International Law*, 2 Ed. Oxford & Oregon, Portland: Hart Publishing.

Van Dam, C. (2011). Air passenger rights after Sturgeon. *Air and Space Law,* 36, pp. 259ss.

Van Houtte, B., (1940). *Responsabilitè civile dans les transports aèriens interieurs et internautionaux/ Civil liability in domestic and international air transport.* Paris-Louvain, pp. 86ss.

Van Vooren, F.S. & Wessel, R.A., (2014). *EU external relations law. Text, cases and materials,* Cambridge: Cambridge University Press, pp. 237ss.

Verschoor, I.H. & Diederiks, P.H. (2012). *An introduction of air law*. Oxford: Oxford University Press.

Von Röhl, H. (1938). *Das Recht der Personenbeförderung/ The right of passenger transport*. Marburg in Hessen, N. G. Elwert.

Wagner, R. (2008). Neue kollisionsrechtliche Vorschriften für Beförderungsvertrage in der Rom I-Verordnung/ New conflict of law's provisions for contracts of carriage in the Rome I Regulation. *Transportrecht/ Transport law*, 31, pp. 221ss.

Wagner, R. (2009). Normenkonflikte zwischen den EG-Verordnungen Brussel I, Rom I und Rom II und transportrechtlichen Rechtsinstrumenten/ Conflicts of norms between the EC regulations Brussels I, Rome I and Rome II and transport legal instruments. *Transportrecht/ Transport law*, 32, pp. 103ss.

Walulik, J. (2016). *Progressive commercialization of airline governance culture*. London & New York: Routledge.

Walulk, J. (2018). *Harmonising regulatory and antitrust regimes for international air transport.* London & New York: Routledge.

Wan Sung, S.S. (1995). Korean Air Skid in Cheju Island Case. *Proceeding of the 7th International Aerospace Law Seminar, Cheongju: Air Force Academy Republic of Korea,* pp. 121ss.

Weigand, T.A. (2001). Accident, exc1usivity, and passenger disturbances under the Warsaw Convention. *American University of International Law Review*, 16, pp. 916ss.

Wetger, J. (2006). The ECJ decision of 10 January 2006 on the validity of Regulation 261/2004: Ignoring the exclusivity of the Montreal Convention. *Air and Space Law*, 31, pp. 133ss.

Whalen, T.J. (2000). The new Warsaw Convention: The Montreal Convention. *Air & Space Law,* 25, pp. 12 ss.

Wilderspin, M. (2008). The Rome I Regulation: communitarisation and modernisation of the Rome Convention. *ERA Forum*, 9, pp. 260ss.

Ziegler, T.D. & Takacs, I. (2012-2013). The law applicable to contracts in the European Union. A competition between Rome I Regulation, other sources of EU law and directive law as implemented. *California International Law Journal,* 43, pp. 2ss.