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Review Article

Review of Liability of Investor (Operator) in Accordance with the Montreal Convention on Compensation for Damage Caused by Aircrafts to Third Parties (2009)

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ABSTRACT: ***The rapid expansion of international aviation has generated profound economic and social benefits, yet it has also introduced complex legal challenges concerning liability for damages caused by aircraft. Beyond the risks borne by passengers and cargo, aviation activities may result in significant harm to individuals, property, and the environment on the ground. These concerns have long occupied the international legal order, leading to successive treaties such as the Rome Convention of 1952 and, more recently, the Montreal Convention of 2009 on Compensation for Damage Caused by Aircraft to Third Parties. The latter instrument represents a substantial evolution in air law, as it redefines the scope of operator liability, specifies the conditions for its establishment, and introduces clearer limits and mechanisms for compensation. This study critically examines these provisions, highlighting the balance sought by the Convention between protecting third-party victims and ensuring the continued viability of international civil aviation.***

KEYWORDS: ***Montreal Convention 2009, Aviation Law, Operator Liability, Third-Party Damages, Air Law Compensation, International Conventions, Aircraft Accidents.***

INTRODUCTION

The considerable services provided by aircrafts in transporting both people and goods, as well as other activities, including those for scientific, agricultural and health purposes, are met on the other hand by a set of damages resulting from use of aircrafts in aviation. Those damages vary, as they may be suffered by passengers, their luggage, goods transported, or individuals serving the aircraft, whether while in the air or on the airport ground. Furthermore, a flying aircraft may cause damage to property, facilities, or individuals on the ground when it falls or when items or individuals fall from it. Such damages drew the attention of the international community since aircrafts were first used. In 1933, the Convention on Damage Caused by Aircrafts to Third Parties on the Surface was ratified. However, it was not accepted by all states and there were objections to some of its provisions. Then, on 07/10/1952 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface was signed, and was later amended by Montreal Protocol 1978.

Believing that the said convention needed to be revised and updated, International Civil Aviation Organization (ICAO) held at its headquarters in Montreal the International Conference on Air Law (20/04-02/05/2009). Two conventions were ratified in the Conference: "Convention on Compensation of Damage to Third Parties Aircrafts" and "Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft".[1]

The first convention contained many provisions that explained the extent and conditions of the convention implementation, operator's liability, limitations of liability, and means of denying such liability, as well as other provisions. In this paper, some of the provisions regulating operator's liability in accordance with the Montreal Convention are examined, including defining an operator, conditions of his liability, and his limited liability, so as to shed light on the new provisions approved by the said convention. To learn those provisions, the paper is divided into three sections:

Section One: Definition of operator

Section Two: Conditions for the establishment of operator's liability

Section Three: Operator's limited liability

DEFINITION OF OPERATOR

International conventions, including Rome Convention 1952 and Montreal Convention 2009, were keen on defining the operator due to the importance of such definition – which includes identifying his legal position and the obligations imposed on him by the Convention – distinguishing him from other persons carrying out activities related to aviation; and distinguishing his liability from that of other persons that can be held accountable for aircrafts-related incidents, like carriers, ground service providers, air traffic controllers and others.

Definition of Aircraft Operator as per Montreal Convention 2009

(Ch.1, Art.1.f) of Montreal Convention states that an operator is "the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority".[2]

Rome Convention 1952, 2.2., defined the operator as:

a. The person who was making use of the aircraft at the time the damage was caused, provided that if control of the navigation of the aircraft was retained by the person from whom the right to make use of the aircraft was derived, whether directly or indirectly.

[1] While in the "General Risks Convention" it's being considered: The conventions of "Unlawful Interference" in International Civil Aviation Organization (ICAO), working paper, General Assembly, thirty-seventh session, a working paper provided by the Board of ICAO, document No. LE2/ A 31- WP/ 13 22-6-2010. Available on the website https://www.ICAO.Int.

[2] There's no deal in the Arabic language regarding the term by which aircraft operator is described. Some Arab laws such as Article (76) of the Lebanese Civil Aviation Law issued on 11/01/1949 has used "the operator "term, and it has provided that "the operator of the aircraft is liable … "which is the same term used by the French Civil Aviation Law which has stipulated in Article (142-2) that "the aircraft operator is liable… ". It's worth mentioning that the ruling (2010-1307) had amended the provisions of the mentioned law and decided to integrate it with the Code of transport issued on 03/10/2010 and in force in 01/11/2010. It's being considered: Website: https://egfrance. Gov. Fr.

b. A person shall be considered to be making use of an aircraft when he is using it personally or when his servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority.[3]

It is clear from the foregoing that the Montreal Convention 2009 and the Rome Convention 1952 defined the operator as anyone who was using the aircraft, whether directly or through servants or agents, whether or not within the scope of their authority, at the time of the incident. By such definition, the conventions tried not to allow the operator the opportunity to evade implementation of the convention when damage is caused by one of his servants or agents outside their authority by claiming they weren't carrying out their duties when damage occurred. Jurisprudence opinions go in two directions when it comes to defining the operator. The first opinion is that an operator is the person who has the right to monitor and direct an aircraft, that is, its legal guardian.[4] On the other hand, the other camp views an operator of an aircraft as someone who uses it for financial gain. Such a person may be its owner who operates it directly or someone who rents and operates the aircraft.[5] Some believe that an operator is the person benefiting from the aircraft activity and should be held accountable for the damage it causes.[6] In judiciary, French Council of the State grants the investor – Air France in this case – in claims of damage resulting from noise caused by aircraft the right to return to Paris Airport administration, being the direct?[7]

Unlawful User of Aircraft

The Convention on Compensation for damage caused by aircraft to third parties has not set out a provision on the liability of an unlawful user of an aircraft – a person who takes over an aircraft and uses it for aviation. It seems that it has referred this topic to the provisions of the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft 2009; and determination of liability resulting from such act, especially when the user has caused damage to a third party.

CONDITIONS FOR LIABILITY OF THE OPERATOR

For the liability of the operator in accordance with the Montreal Convention for Damages Caused by Aircraft to Third Parties to be present, the following conditions should be available:

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[3] National laws have also identified the operator as the Iraqi Civil Aviation Code No. 148 for the year 1974 in paragraph 7, Article 1 as that he is "the natural or legal person who operates an aircraft which is under his command be it for his account or on behalf of someone else ". The foregoing provision shows that the aircraft operator can be either:

- The aircraft owner who invests it directly in air transport activity and who's its leadership is under his command.
- The aircraft lessee and who's its leadership is under his command, during investment in air transport activity or air navigation in general. For him who rents an aircraft that is not under his command is not considered an investor, and the lessor of the aircraft will acquire the mentioned description.

[4] To consider: Dr. Abu Zaid Radhwan, Air Code, Commercial Aviation Law, Dar Al-Fiqr Al-Arabi, Cairo, without publication year, P. 136. In the same sense: Dr. Abdulfadheel Mohammed Ahmed, Private Air Law, Al-Jalaa' Library, Al-Mansoora, without mentioning the year of publication, P. 287.

[5] Dr. Abu Zaid Radhwan, the reference was mentioned previously, P. 137.

[6] To consider: Dr. TharwatAnees Al-Asyooti, Civil Aviation Law, Dar Al-Nahdha Al-Arabia, Cairo, 1966, P. 349.

[7] French Magazine for Air Law R.F.D.A.S 1989, P. 56.

Here, it should be noted that the jurisprudence is disputed between two trends in determining the liability on damages referred to in the body, a trend goes that the operator who should be reversed is the air carrier, while the other trend goes that the airport administration is the one who should be liable for these damages. This was confirmed by the French Council of State in recent ruling issued on 07/03/2018 regarding the noise emitted from aircrafts that take off or land in Urly, le Bourget and Roissy or what is also called Charle de Galle, as the French Government was accused for the failure in taking necessary procedures to minimize noise, then the ruling had been referring the action to the administrative courts to pass judgment on the mentioned airports. To consider this judgment: Website: www. Advocnura. Fr.

First: The occurrence of an event causing damage to a third party

Second: Damage should take place on the territory of a State Party

Third: Damage should be caused by an aircraft while in flight

Fourth: The flight should be an international one

Those conditions are discussed below.

First: The occurrence of an event causing damage to a third party

For the liability of the operator under with Convention of Montreal 2009 to exist, an event should occur. Chapter 1, article 1.b. states that an "event" occurs when damage is caused by an aircraft in flight other than as a result of an act of unlawful interference.[8] From the aforementioned, it is clear that the Montreal Convention didn't define an "event"; rather, it indicated, in general terms, that it occurs when an aircraft in flight causes damage to a third party without mentioning the causes leading to its occurrence, as it is not possible to list all such causes. The Convention also stated that environmental damage is compensable – a new provision introduced by the Convention, as an aircraft may not cause damage to persons or properties on the surface, but to the environment. Such damages should be compensated as long as the law of the state where the damages occurred obliges compensation.

Second: Damage should occur on the territory of a state party

Ch.1, Art. 2 of the Montreal Convention stipulates that damages caused by an aircraft to a third party should occur in the territory of a State Party. If damage occurs in the territory of a state that is not a party to the Convention, its provisions shall not apply. Instead, the rules of law of the relevant jurisdiction will apply. Montreal Convention does not contain a provision stating that the aircraft causing the damage to the third party in the territory of a State Party should be registered with a State Party, as was the case in Article 1, Clause 23 of the Rome Convention[9], that is, by an aircraft registered with a State other than the one where the damage occurred. Thus, it seems that the Montreal Convention 20009[10] considered the standard of "damage should occur on the territory of a state party" and did not stipulate that the aircraft causing the damage should be registered with a state other than the one within whose territory damage has occurred.

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[8] It is noteworthy that The Warsaw Convention regarding the unification of some international air transport rules signed on 12/10/1929. Also, Montreal Convention signed on 18/05/1999 which replaced The Warsaw Convention have used the term "Event" when sat up the provisions of the carrier's responsibility in the transmission of goods and luggage. While they used the term "accident" when regulated the provisions of the carrier's responsibility in the transmission of persons. Some doctrines said of the necessity to differentiate between the two mentioned terms. The term "event" is most common than the term "accident" because it includes all potential reasons of the damage whether they were relevant to transmission process or not. Other opinions used the term "incident" instead of "accident" to include all possible damage cases. To consider: Dr. AkramYamilki, Public and Private Air Law, Jihan's University Publications, Irbil-Iraq, First edition, 2014, P. 239-240.

[9] Paragraph 1 of Article 23 of the Convention of Rome stipulated that "this Convention is applicable to the damages referred to in Article 1 that take place in the territory of a contracting state from an aircraft that was recorded in the territory of another contracting state".

[10] The Convention of Rome required the existence of a foreign element on the aircraft that make the damage, means that it should be recorded in the territory of another state other than the one where the damage took place. And if it was recorded in the state where the damage took place then the provisions of the mentioned Convention shall not be applied. To consider: Dr. Abdulfadheel Mohammed Ahmed, aforementioned reference, P. 276-277. It is necessary to point out that the title of the Convention of Rome for the year 1952 was clear regarding the application of its provisions on foreign aircrafts "Foreign Aircrafts", means the one registered in a state other than the contracting one where the damage took place, while Montreal Convention for the year 2009 has no "foreign" term by which the aircraft that caused the damage was described.

The occurrence should not be caused by an act of unlawful interference; the Montreal Convention does not apply to such acts. Furthermore, the occurrence should result in damage to a third party, and such damage should result directly from the occurrence. Ch. 2, Art. 2, states that the damage should be a direct consequence of the occurrence. Indirect damage, on the other hand, like noise caused by an aircraft while passing through airspace, is not subject to the Agreement as far as the aircraft has complied with applicable aviation regulations – something stated earlier herein.

The agreement has shown the type of compensable damage. Article 3 of Chapter 3 states:

(a) Damages due to death, bodily injury, and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.

(b) Damage to property shall be compensable.

(c) Environmental damage shall be compensable, so far as such compensation is provided for under the law of the State in the territory of which the damage occurred."

The provisions above show that the Montreal Convention 2009 has made it mandatory to compensate for death and bodily injury, which is customary for international agreements regulating air transport.[11] This convention, however, stated that mental injury is also compensable. Although the concept of "mental injury" is not clear, it seems from the text that it refers to psychological damage[12] resulting from a psychological illness, "resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury".

But what is the judgment for other psychological damages that may result from an occurrence, including compensability for psychological damages a person may sustain due to the death of a spouse or child? It seems that the Convention does not state clearly that such damages are compensable. In such a case, provisions of national law concerning the possibility of compensation or not may apply. Unlike the Rome Convention of 1952[13], the Agreement included a provision for compensation of environmental damages. However, there is a restriction that compensation for such damages should be lawful according to the law of the state within the territories of which the occurrence took place. Otherwise, the damage is not compensable.

The convention defined the concept of a state territory in Ch. 3, Art. 2. A territory is not limited to mainland, internal rivers, lakes, and territorial waters; it also includes ships in and aircraft above the high seas, which are considered part of or an extension of a state's territories. Thus,

[11] Article 17 of The Warsaw Convention 1929 pointed out the carrier's responsibility of death, injury or any other physical damage to the passenger. Paragraph 1 of Article 17 of Montreal Convention 1999 decided the responsibility of the carrier in case of passenger's death or physical injury.

[12] The Warsaw Convention 1929 did not include an express provision about the permission of compensation of psychological and moral damages, what raised the dispute in doctrine and jurisprudence regarding the permission of the compensation to a trend that refuses the compensation and other that permits it. To consider: Dr. Talib Hassan Moosa, International Air Law, Dar Al-Thaqafa, Amman, first edition, 1997, P. 152.

[13] Responsibility of ecological damages did not have special attention from the international community the time this convention was set, but this was changed since the 1970s, as the environment had received a considerable attention from the international community. This was reflected in an international conference called for by United Nations, and it was held in Stockholm in June 1972. The conference conducted the basic Declaration on the Human Environment which included 26 articles, one of them is article 22 that pointed out the necessity of compensation for the ecological damages.

the damage they sustained is damage occurring within the State's territories.[14] This was stated in the Rome Convention of 1952.[15]

Montreal Convention 2009, however, expanded the concept of a State's territories. We find Chapter 3, Article 2 stating that damage occurring in "the Exclusive Economic Zone" is regarded as damage occurring in the territory of the state. In addition, it regarded damage to platforms or other installations in the Exclusive Economic Zone or the Continental Shelf as having occurred in the territory of the State which has jurisdiction over such platform or installation – a new addition made by the Convention.

Third: Damage should be caused by an aircraft in flight

It has already been mentioned that the Montreal Convention 2009 – as stated in Ch.1 Art.2 and Ch.1 Art.3 – applies to damages caused to a third party by an aircraft in flight. To avoid any disagreement, Ch.1 Art.1.c of the convention defined the phrase "an aircraft in flight" by saying that "an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading".

According to this text, an aircraft is considered to be in flight, and thus provision of the convention applies to the damages it causes to a third party, since all of its external doors are closed after passengers embark or goods are loaded onto it. Thus, such a moment is the moment when the convention is in force. If any damage is caused by the aircraft thereafter, the Convention applies, even if the aircraft is standing still on the airport ground and its engines are off. The state of being in flight ends once any of its doors are open to disembark passengers or unload goods.

In fact, the standard adopted by the Convention to identify the concept of in-flight, which depends on whether an aircraft's doors are closed or opened to determine the start or end of flying, is questionable, because this should not be the standard. Rather, it should be the moment when the aircraft's engines start working to elevate or take the aircraft off the ground till it lands on the airport ground. How can an aircraft be described as being in flight while it is standing still on the ground? The Rome Convention of 1952 followed a more accurate standard in determining the beginning and end of flying. Ch.2, Art.1 thereof states that an aircraft is in flight "from the moment when power is applied for actual take-off until the moment when the landing run ends.

In the case of an aircraft lighter than air, the expression "in flight" relates to the period from the moment when it becomes detached from the surface until it becomes again attached thereto. This shows that the Rome Convention relied on determining the start of the state of being in flight on the moment when the aircraft engines start working to detach the aircraft from the surface until its landing is complete. This sounds closer to the concept given by the Montreal Convention 2009, as real flying risks start when the aircraft's engines are on to leave the ground, not when its doors are closed in preparation for take-off.

[14] To consider: Dr. Abdulfadheel Mohammed Ahmed aforementioned reference, P. 279. In the dispute that was raised under the Convention of Rome 1933 of whether the ship or aircraft on the high seas are considered a part of the state territory or not, to consider: Dr. Mohammed Fareed Al-Uraini, Dr. Hani Dwaidar, Commercial Aviation Law, Dar Al-Nahdha Al-Arabia, Cairo, 1995, P. 55.

[15] To consider: Paragraph 2 Article 23 of the Convention of Rome 1952 that had stipulated that " in order to achieve the purposes of this convention, the ship or aircraft on the high seas shall be deemed as a part of the state in which it was registered".

Fourth: The flight should be international

For the Montreal Convention 2009 to apply – in addition to what is mentioned above – the aircraft causing damage to a third party should be on an international flight. Ch.1, Art.1, d. states that an international flight is "any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State".[16]

From the above, it is clear that a flight is considered international in two cases: when both the place of departure and destination are within the territories of two states, or when they are situated within one State but there is a stop in another State.

These two cases are discussed below:

First: When the place of departure and intended destination are situated within the territories of two States.

For a flight to be an international one, the places of departure and destination should be situated within the territories of two States. The place of departure is the place where transport begins, while the place of destination is the place where transport ends. Break of transport has no effect. The provisions of the Conventions apply whether there is a break in transportation – when the aircraft lands in the territories of another country to disembark passengers, unload goods, or allow some passengers to move to another aircraft – or not, that is, when the aircraft goes from the point of departure to its destination without making any stops. As long as the places of departure and destination are within one country, the characteristic of being international remains available even when the flight is not completed for whatever reason, like when bad whether forces the aircraft to return to its place of departure.[17]

Second: When the place of departure and intended destination are situated within the territories of one State, provided there is a stop (landing) in the territories of another State.

A flight is also considered international when the places of departure and intended destination are situated within the territories of one State, provided that there is a landing or stoppage in another State. Neither the airport of landing nor whether passengers have the right to disembark or not is a condition.[18] Although the provisions of the Convention apply to international flights in accordance with the aforementioned concept, the Convention allows implementing its provisions to national (internal) flights by an announcement sent by the Member State to ICAO

[16] The Convention identified the concept of the international flight as it was decided by Warsaw 1929 and Montreal 1999 Conventions regarding the unification of some special rules of international air transport, as paragraph 2 of Article 1of The Warsaw Convention stipulated that "regarding this Convention, any transportation which its leave and final destination points, according to the contract between the parties, are either in the territory of two High Contracting Parties or in the territory of one High Contracting Party shall be deemed an international transport, if there was an agreed stopping point in the territory that's under the sovereignty of another state…". Paragraph 2 of Article 1 of Montreal Convention 1999 that has replaced The Warsaw Convention has taken the same concept.

[17] Basically, determining the internationality of air transport according to The Warsaw 1929 and Montreal 1999 Conventions is as what the two parties agreed on, and this is what the two mentioned conventions expressly decided and not the actual track of the aircraft. To consider: Dr. Mahmood Mukhtar Bareeri, Dr. Omar Fu'ad, Air Law, Dar Al-Nahdha Al-Arabia, Cairo, 2007, P. 126, Dr. Mahmood Ahmed Al-Kindri, Legal System of International Air Transport according to Montreal Convention 1999, Updating Warsaw System, Scientific Publication Board, Kuwait, 2000, P. 38.

[18] To consider: Mohammed Na'eemAlwa, public international law encyclopedia, Air Law, Seventh part, Zain legal library, Middle East cultural center, Beirut, first edition, 2012, P. 136.

as stated in Ch.2 Art.2. The reason behind such an exception is to expand implementation of the Convention provisions.

LIMIT OF THE OPERATOR'S LIABILITY

International conventions regulating transportation[19], whether by sea, air, or railways – unlike national laws – set out to define the liability of the one carrying out the transportation activity. Montreal 2009[20] followed that rule, limiting the operator's liability for the damages caused by aircraft to third parties.[21] Jurisprudence has offered many justifications for limiting operator's liability[22], including:

(a) The accidents an aircraft may have – which may cause its destruction and the loss of all that it carries of people, luggage, or goods– may lead, if the Operator's liability thereof is established, to great prejudice and injustice. If it cannot pay the compensations ordered by the court, it may declare bankruptcy, a situation that may paralyze aviation.[23]

(b) Continuation, development and thrive of aviation is associated with the capability to provide insurance for risks resulting from such activity. Forcing the operator to compensate for all damages is an obstacle standing in the way of achieving the said goal.[24] The Convention on Compensation for Damage Caused by Aircraft to Third Parties of 2006 provided for defining the liability of the operator and set a ceiling for the compensation an operator is obliged to pay in case of damage, taking into consideration the weight of the aircraft that caused the damage when determining the amount of compensation.[25]

Article 4 of the Convention sets out the limits of compensation as follows:

1. The liability of the operator arising under Article 3 shall not exceed, for an event, the following limit based on the mass of the aircraft involved:

(a) 750000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less

(b) 1500000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1000 kilogrammes

[19] What is established by the international conventions and treaties for the naval transmission of goods about the naval carrier's liability, and what is established by Brussels's treaty about the unification of special rules of shipping deeds signed on 25/08/1924. Paragraph 5 of Article 4. And also, what is established by Hamburg treaty which is known as The United Nations Convention for Naval Transmission of Goods signed on 31/03/1978. Article 6. Also, what is established by the United Nations Convention about the international transport contracts of goods through the sea wholly or partially, which is known as Rotterdam Rules that were established by the UN General assembly resolution No. 3/122 on 11/12/2008. Article 59.

[20] An example is what was established by The Warsaw Convention regarding the unification of some special rules of international air transport 1929. Article 22, and Montreal Convention 1999 that was replaced by Article 12-22.

[21] An example is Berne Convention for goods transport by railways signed on 25/02/1961.

[22] Basically, in the national laws liability is not underlined. Compensation should be equal to the loss of the affected plaintiff and the gains he lost. For example, Article 207 of the Iraqi Civil Code, the court estimates the compensation in all cases as much as the damages of the affected and the gains he lost provided that it should be a natural result of the unlawful act.

[23] To consider: Dr. Ali Al-Baroodi, Dr. Mohammed Fareed Al-Oraini, Dr. Mohammed Al-Sayed Al-Fiqqi, Naval and Air Law, Al-Halabi legal publications, Beirut, 2001, P. 632.

[24] Dr. Ali Al-Baroodi, Dr. Mohammed Fareed Al-Oraini, Mohammed Al-Sayed Al-Fiqqi, aforementioned reference, P. 632.

[25] This standard seems arbitrary, for damages by aircraft to the third party (the other) on earth, funds or facilities have no relation to it sometimes, as a heavy aircraft may cause slight damage, such like when it or a thing from it falls on a farm or field. And a light weigh aircraft may cause substantial damages to facilities or funds on earth due its crashing on buildings. Hence, it's necessary to find another solution which is obliging the operator pay a certain rate of the compensation amount that's decided by the court - after consulting experts – like a half or less or more and not according to the standard of aircraft weight.

(c) 3000000 Special Drawing Rights for aircraft having a maximum mass of more than 1000 kilogrammes but not exceeding 2700 kilogrammes

(d) 7000000 Special Drawing Rights for aircraft having a maximum mass of more than 2700 kilogrammes but not exceeding 6000 kilogrammes

(e) 18000000 Special Drawing Rights for aircraft having a maximum mass of more than 6000 kilogrammes but not exceeding 12000 kilogrammes

(f) 80000000 Special Drawing Rights for aircraft having a maximum mass of more than 12000 kilogrammes but not exceeding 25000 kilogrammes

(g) 150000000 Special Drawing Rights for aircraft having a maximum mass of more than 25000 kilogrammes but not exceeding 50000 kilogrammes

(h) 300000000 Special Drawing Rights for aircraft having a maximum mass of more than 50000 kilogrammes but not exceeding 200000 kilogrammes

(i) 500000000 Special Drawing Rights for aircraft having a maximum mass of more than 200000 kilogrammes but not exceeding 500000 kilogrammes

(j) 700000000 Special Drawing Rights for aircraft having a maximum mass of more than 500000 kilogrammes

2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply. The following notes can be given regarding Article Four of the Convention:

First: The Convention raised the compensation amounts set out by the Rome Convention 1952[26], taking into consideration the decrease in money real value since the time of the Rome Convention.

Second: The advancement in aircraft manufacturing and security levels achieved by the aviation industry. Compensation goes up as hazardous aircrafts may face a decrease.

1. Montreal Convention 2009 used special drawing rights SDRs (1) as the unit for measuring compensation. SDRs were first introduced for such a purpose by the Montreal Protocol of 1978, which amended the Rome Convention of 1952. Montreal Convention 2009 further provided for new provisions. These are:

First: Giving priority to compensation for death and bodily injury

Article 5 of the Montreal Convention 2009 states that "If the total amount of the damages to be paid exceeds the amounts available according to Article 4, paragraph 1, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury

[26] Special drawing right units are basically international reserve developed by the International Monetary Fund in 1969. In March 2015, 2041 billion special drawing right units were developed that amounts for US 285 billion. Special drawing units can be exchanged by any main currencies decided by the IMF which include Chinese yuan, Euro, US dollar, Japanese yen and Sterling pound from 01/10/2016. To consider: IMF website www.imf.org. It is noteworthy that Montreal protocols established in 1975 – which did not enter into force – decided for the first time to replace the currency unit decided by Article 22 of The Warsaw Convention regarding the unification of Public International Air Transport 1929, in calculating the certain amounts of compensation in the Gold franc (Franc Poincaré) that include according to the mentioned Article " fifty six half a milligram of pure gold of 900 Karat in the thousand" to the special drawing right units. Late, these units prepared a currency unit in calculating the compensation amounts according to Montreal Convention which replaced The Warsaw Convention for the Member States in the IMF. To consider from the aforementioned details: Our book Air Law, Al-Halabi legal publication, first edition, 2017, P. 267-268.

and mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage." The foregoing text shows that compensation for death, bodily injury, and mental injury has priority over damages to properties and facilities on the ground if the compensation is not enough to cover damages to the latter. If it is sufficient, however, no priority is given. This provision was made based on humanitarian considerations in order to aid the damaged people and provide them with the money needed for their treatment.

Second: Court expenses

Article 7 of the Convention states that: "1. The court may award, in accordance with its own law, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest. 2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later".[27] The foregoing text shows that a court may order – if its national law permits – to award the litigation expenses incurred by the claimant, including interest. Here, there is a deficiency in the text that should have been remedied: awarding such expenses may decrease the amount of compensation the claimant is entitled to. The Court awards such expenses in a separate paragraph even if the amount awarded exceeds the limits of liability set out by the Convention.

However, paragraph 2 of the said Article does not authorize courts to award court costs and other expenses if the operator offers a certain amount in writing to settle the claim within six months starting either from the date of the event causing the damage or before the claim, whichever comes first. The purpose behind such provision is to encourage operators to settle the compensation claimants are entitled to and avoid litigation and the associated delay.

Third: Advance Payments

Article 8 of the Montreal Convention states that "the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator".[28]

This means that a court may rule that the operator should make an advance payment from the compensation awarded to the claimant under the following conditions:

(a) The claimant should be a natural person who sustained damage because of the event caused by the aircraft. Thus, if the claimant is a legal person, the court shall not rule for such an advance payment.

(b) There should be a necessity justifying the ruling for such payment, like urgent human or economic needs.

[27] The provisions of this Article were taken from the Article 28 of Montreal Convention regarding the unification of rules of international air transport signed on 28/05/1999.
[28] The provisions of this Article were taken from the Article 28 of Montreal Convention regarding the unification of rules of international air transport signed on 28/05/1999.

(c) The national law of the court adjudicating the dispute should permit such payment. If it does not – as is the case with most laws – the court shall not rule for it.

In any case, ruling for such payment does not constitute, as expressly stated in the Convention, an acknowledgment of the operator's liability for the event. The court has full freedom – based on available facts – to decide whether the operator is liable or not. If the court decides that the operator is liable, the amount already paid will be considered an advance payment that should be followed by the rest of the amount judged by the court.

CONCLUSION

The Convention on Compensation for Damage Caused by Aircraft to Third Parties, signed in Montreal on 02/05/2009, is a part of the series of revising and developing international conventions regulating aviation to stay abreast with the advancements taking place in the aircraft industry, in particular and aviation in general. In addition, there is a rise in accidents resulting from aircraft crashing into or hitting properties or facilities on the ground. There is no doubt that the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface1952 no longer keeps up with the aforementioned developments in aviation. This paper is a modest attempt to evaluate the provisions governing operator's liability for damages to third parties. The researcher found that Montreal Convention came up with some new principles, especially with respect to scope and conditions of its implementation and increasing the compensation for the damages caused by aircrafts to third parties on the surface in proportion with the economic value of properties, as well as some new principles drawn from Montreal Convention for the Unification of Certain Rules for International Carriage by Air signed on 28/05/1999. In addition, the Convention sought to provide the highest level of protection to those damaged on the surface by approving the liability insurance system and obliging States that would join the Convention to oblige operators to maintain a sufficient level of insurance or warranty to cover the damages resulting from carrying out their activities.