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THE UNITED REPUBLIC OF TANZANIA AND CONVENTIONS ON CARRIAGE OF PASSENGERS, CARGO AND BAGGAGE BY AIR AVIATION: A HISTORICAL STUDY

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Abstract:
Transportation of both passengers and goods, in URT, has become a very important and paramount issue since the inception and commencement of the air aviation law in URT and the world in general. Several attempts have been made by partners' states, that in the beginning, started and initiated a milestone journey to the point where the aviation law regime has reached today. The enactment of international laws governing the aviation industry has gone through several stages. With several challenges encountered and evidenced for several years, transportation of passengers and goods has become a must and paramount. URT as a party to several international air rules and Conventions, aircraft from within and outside URT, have utilized both domestic as well international conventions in ensuring that passengers and goods are transported within and all over the world and their safety and life are well safeguarded through air laws applicable within URT. This research article is aimed at examining various international conventions applicable to URT. The article generally attempts at showing the historical evidence on the carriage of passengers through various conventions to which URT is a party, and how transportation of passengers and goods has become possible. The research article also covers the issues of liabilities for air carriers operating in URT with a special focus on the Conventions that are applicable in URT and the extent of compensation that those Conventions guarantee as a result of personal or bodily injuries or loss of passengers' goods that seem to be harmonized with current domestic aviation laws in URT.

Keywords:
Aviation; International Air Law; Carriage; Goods; Passengers; Baggage, and Tanzania

1. Introduction
Aviation is considered the youngest law branch whose unification should contribute to the avoidance of settlement of spatial conflict issues among different airline legislation (Ridanovic, B., 2017; Naboush, E., and Alnimer, R., 2020; Lamb, T., Ruskin, K., Rice, S., and Khorassani, L., 2021). The URT is a party to a number of international conventions governing the aviation industry in the world. Since URT is not an island, it is under obligation to include in its aviation system, all international aviation law governing the aviation industry in the world. From time to time, URT has ratified every international aviation law that comes into the aviation system. This has helped URT to make enactments of its various domestic laws governing the same aviation industry that are in compliance with international aviation laws applicable in Tanzania. Equally, URT being compliant with those international aviation laws in its aviation system, in general, has made the aviation industry more efficient in offering aviation services for both domestic as well as international flights. Both domestic and international carriers working or operating in URT ensure that they offer airline service with great assurance of protecting both passengers and cargo with a view that they have such obligation obligations under international aviation laws since they were incepted in URT. International aviation laws become operational and have also increased assurance to passengers and goods safety and life as daily and frequent fliers and users of the airline in URT.

2. Methodology Employed

The type of this research is purely qualitative in nature. Legal materials used in this research paper are secondary legal materials. This paper mostly used its legal analyses based on the Chicago Convention of 1944 on International Civil Aviation, the Paris Convention, of 1919, The Warsaw Convention of 1929, The Hague Protocol of 1955, the Guadalajara Convention of 1964, the Guatemala City Protocol of 1971 and finally, the Montreal Protocols 1, 2, 3&4. Secondary materials were taken from academic journals as well as other legal sources. Using the statute and conceptual approaches, international carriage by air was well covered and conceptualized. Various case laws, both local and foreign, that are relevant to the topic under discussion were also covered and digested. Other materials from other disciplines than law were also considered.

3. Conceptualizing International Carriage by Air and its Classification

In ordinary language, international carriage is conceptualized as any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State, if according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State (htpp://www.lawinsider.com, 2023). The Free Dictionary defines carriage by air as a contract to carry goods or passengers. The carriage of goods by air is affected by the consignor and the carrier, with the rights and liabilities of the parties being governed by contract law. In the case of international carriage by air, however, certain international conventions such as the Montreal Convention are also included. Paterson (Paterson, R., 1954) conceptualizes "international carriage" as a contract between the place of departure and the place of destination. The author further categorizes the same into "international carriage" as defined under article 1(2) of the Warsaw Convention, "internal carriage" and carriage between countries which is not "international carriage". Vepkhvadze (Vepkhvadze, T., 2012), on the other hand, defines international carriage in view of what is stipulated under the Montreal Convention of 1999, to mean "any carriage in which, the place of the departure and the place of destination, whether or not there is a break in the carriage or a transshipment, are situated either within the territories of two State Parties or within the territory of a single State Party if there is an agreed to stop place within the territory of another State, even if that State is not State Party (Article 1 of the Montreal Convention, 1999). The author further conceptualizes the same in view of the Warsaw Convention for the Unification of Certain Rules Relating to Carriage by Air, to mean "carriage of persons, luggage or goods performed by aircraft for reward(Ibid). As per Warsaw Convention, 1929 "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or trans-shipment, are situated either within the territories of two States Parties or within the territory of a single State Party if there is an agreed to stop place within the territory of another State, even if that State is not a State Party (Article 2 of the Warsaw Convention, 1929.) Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention (Ibid). It is also important to know who a passenger is for the purpose of this research article. A passenger, for instance, is defined to mean any person, except members of the crew, carried or to be carried in an aircraft pursuant to a Ticket (Article I of the Air Tanzania General Conditions of Carriage for Passengers and Baggage of 2019). For purposes of this work, baggage is used also to include goods, and it is defined to mean any personal property accompanying you in connection with your trip. Unless otherwise specified, it consists of both your Checked and Unchecked Baggage (*Ibid*, Article I of the Air Tanzania General Conditions of Carriage for Passengers and Baggage of 2019).

4. Sources of Aviation Law in URT

The URT aviation industry is regulated by a number of both domestic as well as international conventions (Kasanda, P., 2015). Some of the international conventions to which the URT is bound by them include but are not limited to the ICAO (International Civil Aviation Organization) Convention, 1947, and the Montreal Convention, 1999 the other source could be the CASSOA (Civil Aviation Safety and Security Oversight Agency) for EAC, the Chicago Convention, 1944, Paris Convention 1919, the original Warsaw Convention of 1929, un-amended; the Warsaw Convention as amended by the Hague Protocol of 1955, Guadalajara convention, 1961, Guatemala Protocol, 1971, and Montreal Protocol, 1975. At the domestic level, there are also a number of laws regulating aviation transportation in Tanzania. Some of the domestic statutes governing aviation transportation system include but are not limited to,

the Civil Aviation Act (Cap. 80 R.E. 2006), Tanzania Civil Aviation Authorities Act, 2003, Aerodrome (Airworthiness), Regulations, 2017, the Civil Aviation (Carriage by Air Regulations, 2008, Tanzania Civil Aviation (Licensing of Air Services) Regulations, 2006, Safety Management Regulations, 2018, Operation of Aircraft Regulations, 2017, and Civil Aviation (Security) Regulations, 2018.

5. Conventions on Carriage of Passengers and Goods by Air Aviation Applicable in URT

The Conventions on the carriage of passengers, or goods in aviation transportation law are the group of norms and rules which deal with the legal rights of private persons in air transportation undertakings and transactions. Private persons may be passengers, corporations, and third parties. These include the Warsaw Convention of 1929 and its additional protocols, Montreal Convention 1999, etc. The Convention on the Carriage of Passengers and Goods has gone through stages and developments.

5.1. Paris Convention, 1919

As the first international convention regulating the aviation industry, this Convention established the basic principles of state sovereignty over its territory. The Convention also defined guidelines for the national registration of aircraft. The Convention placed restrictions on the movement of military aircraft. Indeed, this Convention established the basic rules of airworthiness of aircraft and the competency of pilots such as certificates and licenses for the first time. This Convention defined aircraft navigation rules and the establishment of international airways. The Convention further defined rules for the flight of aircraft across foreign territories. The Convention also created the International Commission of Air Navigation. As times went on, this Convention seemed no longer effective, and thereby eventually Chicago Convention of 1944 was promulgated to replace the Paris Convention of 1919.

5.2. The Chicago Convention, 1944

Replacing the Paris Convention of 1919, the main underlying principle of the Convention categorically stated that each State has complete and exclusive sovereignty over the airspace above its territory (Article 1 of the Convention). Through this Convention, an attempt to reach an agreement over fundamental legal and technical standards that would govern all aspects of civil aviation at the international level was eventually made by State members. The member states also created an international organization to develop these standards and oversee their application (the International Civil Aviation Organization (ICAO) was established through the Chicago Convention in 1944). The Convention also was highly successful in unifying technical operating standards for international air transport among State parties. So far, ICAO has achieved a high degree of worldwide standardization for the operation of safe, regular, and efficient air services. This has been made possible through the creation, adoption, and amendment by the Council of International Standards and Recommended Practices (SARPs) (SARPs are contained in the 18 Annexes to the Chicago Convention of 1944). The Convention also indicated a specification whose uniform application is necessary for the safety or regularity of civil aviation. Through the same Convention, compliance with international aviation rules was made mandatory, and in case of impossibility to comply with stipulated aviation rules, a condition was made that ICAO must be notified (Article 38).

5.3. The Warsaw System

To make unification of aviation rules among Member States, the Warsaw System was introduced. This is referred to as the Warsaw Convention of 1929 and its related instruments (protocols) that were added for amendments and improvement purposes of the liability regime under the Convention. These additional instruments included in the Warsaw System included but were not limited to, The Hague Protocol 1955, Guadalajara Convention 1964, Guatemala City Protocol 1971, and Montreal Protocol 1,2,3 and 4. These additional instruments governing the aviation industry will be specifically discussed later in this research article.

5.3.1. The Warsaw Convention, 1929

The Warsaw Convention deals primarily with the extent of the liability of international air carriers towards passengers and owners of cargo shipped by air (Mankiewicz, R. H., 1956; Gardiner, R., 1998). This was the Convention entered into Poland in the year 1929. The Convention had several goals, inter alia, to establish international claims uniformity among nations with different legal systems and philosophical points of view, and to set fair limitations of liability for the encouragement of industry growth, promoting investment, and the taking of financial risks. Indeed, the rationale

for the Warsaw Convention, 1929, among others was the Warsaw Convention was drafted at the time when commercial aviation was in its infancy and international aviation was no more than embryonic. At this particular time, aircraft made of wood, fiber, and some metal, powered by piston-driven gasoline-fired engines, flew by daring pilots who took off and landed from dirt strips, navigating with visual landmarks and a compass.
The Convention was also put in place to eliminate the discrepancies between different countries' legal regimes that posed serious legal problems for international air travelers. Carriers faced a major problem in securing adequate capital in the face of what then appeared to be an enormous risk. The Convention applies to the International transportation of persons, baggage, and goods performed by aircraft for remuneration or hire. The carrier was made liable to pay all provable damage up to a limit of 125,000 French gold francs (about USD 10,000) per passenger in the event of death or bodily injuries suffered by a passenger on board the aircraft or in the course of embarking or disembarking (Article 22 and 17). The carrier was also made liable for up to 250 French gold francs (about USD 20) per kilogram per passenger in case of cargo and 5000 French gold francs (about USD 400) per passenger in case of checked baggage. The Convention also did not keep the limit of liability does not apply in case of willful misconduct in the aviation industry. This encouraged compliance with aviation rules. The Convention also allowed an action for damage must be brought before the court of the carrier's domicile or of his principal place of business or where he has a place of business where the contract was made or the place of destination.

5.3.2. The Hague Protocol 1955
This is the protocol to amend Warsaw Convention 1929 done at The Hague on 28/09/1955 and entered into force in August 1963. Under this Protocol, the limit of liability in the carriage of passengers was doubled to 250,000 French gold francs (about $20,000) per passenger. Furthermore, to avoid negligence in the aviation industry in the world, pilot error defense was eliminated. It is our argument that this Protocol helped much in solving various pertinent issues in aviation history.

5.3.3. Guadalajara Convention 1964
This is the convention supplementary to the Warsaw Convention 1929 done at Guadalajara on 18/09/1961 and entered into force in August 1964. The main purpose of the Convention was to extend the application of the provisions of the Warsaw Convention to the actual carrier as against the contractual carrier (Articles 1 and 2).

5.3.4. Guatemala City Protocol 1971
This is the protocol to amend the Warsaw Convention 1929 signed at Guatemala City on 08/03/1971. The documents of carriage for passengers and checked baggage have been considerably simplified and would enable the substitution of electronic data processing for the issuance of passenger documents of carriage or baggage checks. Strict liability with respect to personal injury or death of passengers regardless of fault was well covered under this protocol. Carriers could be exonerated only in the case of contributory negligence of the person claiming compensation. With respect to delay of passengers or baggage, the liability continues to be based on a refutable presumption of fault of the carrier with reversed burden of proof. The limit of liability of the carrier in relation to personal injury or death was increased to 1,500,000 francs per passenger which is equivalent to $100,000. In case of delay of passenger 62,500 francs ($4,500) and loss of baggage 1500 francs ($1000) was paid as compensation.

5.3.5 Montreal Protocols 1, 2, 3&4
The purpose of these protocols was to replace the limits of liability expressed by a gold clause and introduce Special Drawing Rights (SDR) as defined by the IMF. The gold clause was not conducive to uniform interpretation in view of the present free price of gold which was subject to fluctuations. As a matter of fact, these protocols assisted much in shaping the aviation industry.

5.3.6. Montreal Convention 1999
Marandi and Hazanzadeh (Marandi, M. R., and Hazanzadeh, M., 2015), for instance, while discussing the issue of passengers, baggage, cargo, and delay as covered in the Montreal Convention, are of the view that the airline industry scrambling to recover from its "perfect economic storm," there is a growing conviction that the tough citizenship tests that virtually all countries impose on their airlines are a timeworn relic of another era (Ibid).

This is a Convention that modernizes and consolidates the International legal regime which has been established pursuant to the Warsaw Convention of 1929 and its various amending instruments (the so-called "Warsaw System"). The Convention provided, within a consolidated and uniform framework, the rules relating to the International carriage of passengers, baggage, and cargo performed by aircraft. This Convention was done in Montreal, Canada on 28th May 1998. The Convention was ratified by the United Republic of Tanzania on 11th February 2003. The Convention entered into force on 4th November 2003. The Montreal Convention 1999 does not allow reservations. Recognition in the preamble, the Convention made a 'significant contribution' of the Warsaw system to the harmonization of international air law. It was introduced to modernize and consolidate the Warsaw system. The Convention provided the importance of ensuring the protection of the interests of consumers in international carriage by air. The Convention further provided for equitable compensation based on the principle of restitution. In this Convention, the amount on the limit of liability was increased. In general, it is our argument that the Convention also helped reshape aviation transportation since compliance and liabilities were further upgraded. This was also observed in the case of Qatar Airways and Others v. George Sokoine Mwalingo, Civil Appeal No. 106 of 2017, where Qatar Airways was found liable in terms of Article 22(2) of the Montreal Convention of 1999, and Tanzanian Courts found the claimant compensable.

6. Changes Effected by the Warsaw Systems on Transportation of Passengers and Goods in URT

The Warsaw System brought several changes with regard to the transportation of passengers and goods with respect to liabilities that are accrued in each case in Tanzania. It was categorically stipulated under the Warsaw Convention, 1929 and its protocols that its applicability is only possible when one party is not a signatory to the Montreal Convention 1999 but both signatory to the old Warsaw Convention of 1929. It is also indicated that both parties are not signatories to the Montreal Convention of 1999 but signatories to the old Warsaw Convention of 1929. It is further indicated that application of the Warsaw is not possible when both parties are neither signatories to the Montreal Convention of 1999 nor the Warsaw Convention of 1929, and the limit of liability as set under the two Conventions shall not be applicable. In such a scenario, anything that happens will be considered a normal tort in the court of law as per these Conventions. Even domestic legislation relating to the transportation of passengers is *impari materia* to what is contained in the Conventions.

6.1. Liability under the Montreal Convention

Among significant changes effected under the Warsaw system is that the Montreal Convention establishes a two-tier liability system, with strict liability of up to 100,000 SDRs (US $146,000), and presumptive liability in an unlimited amount. In the first place, first-tier liability- Strict liability on the part of the carrier for death, or injury to the passenger is assumed for the first, amounting to 100,000 SDR (approx.us$120,000) was introduced. Indeed, second-tier- liability beyond the first tier is presumed with the carrier given the opportunity to disapprove (Article 21(2)).

6.2. Liability in Relation to Death and Injury of Passengers in URT

The carrier is liable for damage sustained in case of death or bodily injury of a passenger. This is upon condition that the accident that caused the death or injury took place on board the aircraft or in the course of the operations of embarking or disembarking (Art 17(1)). For damages sustained in case of death or bodily injury of a passenger, the limits of liability of the carrier are 100,000 Special Drawing Rights which is equivalent in Tanzanian shillings of United States Dollars 120,000 for each passenger. This is also articulated in some airlines Guidelines operating in Tanzania such as the Air Tanzania Corporation Limited to ensure compliance with international standards as guided by Conventions under discussion (Article 16.2 of the Air Tanzania General Conditions of Carriage for Passengers and Baggage of 2019).

Despite some improvements that have been made through the Warsaw System and its existing protocols, there has been an endless debate on several issues relating to accidents, injury, causation, and location of the accidents. The scholars and judges have, however, made significant contributions in aviation jurisprudence where the Warsaw Systems has failed to cover it, or judges have also guided properly the intention of the law governing the aviation industry today. It is stated that The Montreal Convention of 1999 made no significant change to Article 17 of the Warsaw Convention.

The Warsaw Convention provides and contains a specific provision relating to injuries, and how victims can be well compensated as thus:
The carrier shall be liable for damage sustained, in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of operations of embarking or disembarking (*Ibid*, Article 17).
From debates arising from various case laws, judges have always been pointing out areas to look into when it comes to issues relating to equitable compensation when personal injuries to passengers occur in case of any air accidents. In this note, it has been severally advised to consider pertinent issues as digested under said article 17 of the Convention. Those pertinent questions include but are not limited to, what kind of "accident" must have occurred. What types of injuries are contemplated by the term "damage sustained in the event of death or bodily injury." Another question is where does one draw the line at "embarking or disembarking", and the last question is what is the extent of payment to be granted. The above four questions have attracted an extensive discussion of various case laws, where this research article discusses those cases in line with the opinions of various judges with regard to a proper interpretation of Article 17 of the Convention and the circumstances under which it applies.
In the case of *Eastern Airlines v. Floyd* (499 U.S. 530 (1991) on May 5, 1983, an Eastern Airlines flight departed from Miami, bound for the Bahamas. Shortly after takeoff, one of the plane's three jet engines lost oil pressure. The flight crew shut down the failing engine and turned the plane around to return to Miami. Soon thereafter, the second and third engines failed due to loss of oil pressure. The plane began losing altitude rapidly, and the passengers were informed that the plane would be ditched in the Atlantic Ocean. Fortunately, after a period of descending flight without power, the crew managed to restart an engine and land the plane safely at Miami International Airport. Respondents, a group of passengers on the flight, brought separate complaints against the petitioner, Eastern Airlines, Inc. (Eastern), each claiming damages solely for mental distress arising out of the incident. The District Court entertained each complaint in a consolidated proceeding. Eastern conceded that the engine failure and subsequent preparations for ditching the plane amounted to an "accident" under Article 17 of the Convention, but argued that Article 17 also makes physical injury a condition of liability.
In another case law of Re Eastern Airlines, Inc., (Engine Failure, Miami Int'l Airport, 629 F. Supp. 307, 312 (SD Fla.1986) where several passengers claimed to have suffered mental distress when their aircraft, bound for the Bahamas, lost power in all three engines and began a sharp and terrifying descent. The flight crew informed the passengers that it would be necessary to ditch the plane in the ocean. Miraculously, the pilots managed to restart the engines and land the jet safely back at Miami International Airport. The U.S. Supreme Court held that Article 17 does not allow recovery for purely mental injuries. This conclusion was based on the French translation (interpreting "lesion corporelle" to mean "bodily injury"), and on the primary purpose of the Warsaw Convention limiting liability in order to foster the growth of the infant airline industry. The District Court consolidated the proceedings and ruled that Article 17 of the Warsaw Convention, which sets forth conditions under which an international air carrier can be held liable for injuries to passengers, does not allow recovery for mental anguish alone. The Court of Appeals reversed, holding that the phrase "lesion corporelle" in the authentic French text of Article 17 encompasses purely emotional distress.
The Court of Appeals went on further by stating that Article 17 does not allow recovery for purely mental injuries. While digesting the matter, the Court began with the treaty's text and the context in which the written words are used. Other general rules of construction may be brought to bear on difficult or ambiguous passages; and, since treaties are construed more liberally than private agreements, the Court may look beyond the written words to the treaty's history, the negotiations, and the practical construction adopted by the parties (Ibid).
The court observed that neither the Warsaw Convention itself nor any of the applicable legal sources demonstrate that the relevant Article 17 phrase, "lesion corporelle," should be translated other than as "bodily injury", which is a narrow meaning excluding purely mental injuries. The court further observed that bilingual dictionaries suggest that that translation is proper, and any concerns that the dictionary definitions may be too general for purposes of treaty interpretation are partly allayed when, as here, the definitions accord with the main English translations of the Convention, including the text employed by the Senate when it ratified the Convention. Moreover, a review of relevant French legal materials reveals no legislation, judicial decisions, or scholarly writing indicating that, in 1929, the year the Convention was drafted, "lesion corporelle" had a meaning in French law encompassing psychic injuries (Ibid).

The court also stated that it is unlikely that the understanding of the term "lesion corporelle" as "bodily injury" that was apparently held by the Convention's contracting parties would have been displaced by a meaning abstracted from French damages law, which, at the relevant time, evidently allowed recovery for psychic injury, particularly when the psychic injury cause of action would not have been recognized in many other countries represented at the Convention. The court observed further that this conclusion is altered by an examination of Article 17's structure. It was stated further that "lesion corporelle" might plausibly be read to refer to a general class of injuries including internal injuries, in contrast with other languages in the Article covering bodily ruptures. Although the official German translation of "lesion corporelle" has been adopted by Austria, Germany, and Switzerland using German terms whose closest English translation is apparently "infringement on the health," this Court is reluctant to place much weight on an English translation of a German translation of a French text, particularly in the absence of any German, Austrian, or Swiss cases adhering to the broad interpretation that the German delegate evidently espoused (Ibid).
The court also translated "lesion corporelle" as "bodily injury" which is consistent with the negotiating history of the Convention. It is reasonable to infer that the drafters of the language that ultimately became Article 17 rejected the broader proposed language, which almost certainly would have permitted recovery for emotional distress, in order to limit the types of recoverable injuries. Moreover, a review of the documentary record of the Warsaw Conference confirms that neither the drafters nor the signatories specifically considered a liability for psychic injury, apparently because many, if not most; countries did not recognize recovery for such injuries at the time. The court also emphasized the fact that the narrower reading of "lesion corporelle" also is consistent with the primary purpose of the Warsaw Convention's contracting parties. This is more concerned with limiting the liability of air carriers in order to foster the growth of the fledgling commercial aviation industry than they were with providing full recovery to injured passengers. It was also observed that the evidence of the post-1929 conduct and interpretations of the Warsaw Convention signatories supports the narrow translation of "lesion corporelle." Although a 1951 proposal to substitute "affection corporelle" for "lesion corporelle" was never implemented, the discussion and vote suggest that, in the view of the 20 signatories on the committee that adopted the proposal, "lesion corporelle" had a distinctly physical scope. Moreover, although The Hague Protocol of 1955, the Montreal Agreement of 1966, and the Guatemala City Protocol of 1971, all refer to "personal injury," rather than "bodily injury." It is evident that none of these agreements supports the broad interpretation reached by the Court of Appeals. There is no evidence that any of them was intended to effect a substantive change in or clarification of, the provisions of Article 17. The Hague Protocol refers to "personal injury" only in the context of giving airline passengers notice that the Warsaw Convention in most cases imposes limits of liability for "death or personal injury." In addition to that, the Montreal Agreement does not and cannot purport to speak for the Warsaw Convention signatories, since it is not a treaty, but merely an agreement among the major international air carriers. Furthermore, the Guatemala City Protocol is not in effect in the international arena, since only a few countries have ratified it, and cannot be considered dispositive in this country, since it has not been ratified by the Senate. Also unpersuasive is the reasoning of the Supreme Court of Israel, in the only apparent judicial decision from a Warsaw Convention signatory addressing the question. It was also stated that "desirable jurisprudential policy" mandates an expansive reading of Article 17 to reach purely psychic injuries (Ibid).

This Court cannot give effect to the Israeli court's perceived policy without convincing evidence that the signatories' intent with respect to Article 17 would allow recovery for a purely psychic injury. This Court's construction better accords with the Convention's stated purpose of achieving uniformity of rules governing claims arising from international air transportation, since subjecting international air carriers to strict liability for purely mental distress, as would the Guatemala City Protocol and the Montreal Agreement, would be controversial for most signatory countries (See page 499 U. S. 546-552 of the Court Judgment). The issue of whether passengers can recover from mental injuries accompanied by physical injuries is not presented or addressed. This is because respondents did not allege physical injury or physical manifestation of injury during the accident (See page 499 U. S. 552-553 of the Court Judgment). While writing for the majority in that dispute, Justice Marshall concluded thus:
The narrower reading of 'lesion corporelle' also is consistent with the primary purpose of the contracting parties to the Convention: limiting the liability of air carriers in order to foster the growth of the fledgling commercial aviation industry... Whatever may be the current view among the aviation industry... Convention signatories, in 1929 the parties were more concerned with protecting air carriers and fostering a new industry than providing full recovery to injured passengers, and we read 'lesion corporelle ' in a way that respects that legislative choice.

The courts have also made observations and set out jurisprudential rules on emotional injuries with respect to aviation accidents. The courts have categorically stated that no compensation can be awarded for emotional injury unless some conditions are considered. On a similar note, the courts have insisted that no recovery is allowed for emotional distress. The courts further state that the recovery allowed for all emotional distress, so long as the bodily injury occurs, and only emotional distress flowing from the bodily injury is recoverable. This is evidenced, for instance in a celebrated case of *Air France v. Saks* (470 U.S. 392 (1885)). where in this case Article 17 of the Warsaw Convention makes air carriers liable for injuries sustained by a passenger only if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking. In this case, the respondent, while a passenger on the petitioner's jetliner as it descended to land in Los Angeles on a trip from Paris, felt severe pressure and pain in her left ear, and the pain continued after the jetliner landed. Shortly thereafter, the respondent consulted a doctor, who concluded that she had become permanently deaf in her left ear. She then filed suit in a California state court, alleging that her hearing loss was caused by negligent maintenance and operation of the jetliner's pressurization system while boarding the carrier's airline.

After the case was removed to the Federal District Court, the petitioner moved for summary judgment on the ground that the respondent could not prove that her injury was caused by an "accident" within the meaning of Article 17, the evidence indicating that the pressurization system had operated in a normal manner. Relying on precedent that defines the term "accident" in Article 17 as an "unusual or unexpected" happening, the District Court granted summary judgment to the petitioner. The Court of Appeals reversed, holding that the language, history, and policy of the Warsaw Convention and the Montreal Agreement (a private agreement among airlines that has been approved by the Federal Government) impose absolute liability on airlines for injuries proximately caused by the risks inherent in air travel; and that normal cabin pressure changes qualify as an "accident" within the definition contained in Annex 13 to the Convention on International Civil Aviation as meaning "an occurrence associated with the operation of an aircraft."
The court categorically decided that liability under Article 17 arises only if a passenger's injury is caused by an unexpected or unusual event or happening that is external to the passenger, and not where the injury results from the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft, in which case it has not been caused by an accident under Article 17 (See page 470 U. S. 396-408). The court while deciding the matter, made the decision based on the facts that the text of the Warsaw Convention suggests that the passenger's injury must be so caused. The difference in the language of Article 17, imposing liability for injuries to passengers caused by an "accident" and provisions of Article 18, imposing liability for destruction or loss of baggage by an "occurrence," implies that the drafters of the Convention understood the word "accident" to mean something different than the word "occurrence." Moreover, Article 17 refers to an accident that caused the passenger's injury, and not to an accident that is the passenger's injury. The text thus implies that however "accident" is defined; it is the cause of the injury that must satisfy the definition, rather than the occurrence of the injury alone (See page 397-400 of the Court Judgment). The court went on to state further that the above interpretation of Article 17 is consistent with the negotiating history of the Warsaw Convention, the conduct of the parties thereto, and the weight of precedent in foreign and American courts (See page 470 U. S. 400-405 of the Court Judgment). To meet the required standards, the courts had distinguished causes that are "accidents" from causes that are "occurrences" which requires drawing a line that may be subject to differences as to where it should fall, an injured passenger is only required to prove that some link in the chain of causes was an unusual or unexpected event external to the passenger.
The court also stated that enforcement of Article 17's "accident" requirement cannot be circumvented by reference to the Montreal Agreement. That Agreement, while requiring airlines to waive "due care" defenses under Article 20(1) of the Warsaw Convention, did not waive Article 17's "accident" requirement. Nor can enforcement of Article 17 be escaped by reference to the equation of "accident" with "occurrence" in Annex 13, which, with its corresponding Convention, expressly applies to aircraft accident investigations, and not to principles of liability to passengers under the Warsaw Convention (See page 470 U. S. 405-408 of the Court Judgment). In determining the matter appropriately, the courts in stating the definition of an accident under Article 17 observed that the courts should be flexibly applied after assessing all the circumstances surrounding the passenger's injuries, and the "event or happening" that caused the passenger's injury must be abnormal, "unexpected or unusual". Finally, the courts further emphasized that the event must be "external to the passenger", and not the passenger's own "internal reaction" to normal flight operations; and where the evidence is contradictory, the trier of fact must determine whether an accident, so defined, has occurred (Ibid).

The issue of bodily injuries was also observed in the case of *El Al Israel Airlines v. Tseng* (525 U.S. 155 (1999)) where on May 22, 1993, Tsui Yuan Tseng arrived at John F. Kennedy International Airport (hereinafter JFK) to board an El Al Israel Airlines flight to Tel Aviv. In conformity with standard El Al pre-boarding procedures, a security guard questioned Tseng about her destination and travel plans. The guard considered Tseng's responses "illogical," and ranked her as a "high-risk" passenger. Tseng was taken to a private security room where her baggage and person were searched for explosives and detonating devices. She was told to remove her shoes, jacket, and sweater, and to lower her blue jeans to midhip. A female security guard then searched Tseng's body outside her clothes by hand and with an electronic security wand. After the search, which lasted 15 minutes, El Al personnel decided that Tseng did not pose a security threat and allowed her to board the flight. Tseng later testified that she "was really sick and very upset" during the flight, that she was "emotionally traumatized and disturbed" during her month-long trip in Israel, and that, upon her return, she underwent medical and psychiatric treatment for the lingering effects of the body search (122 F. 3d 99, 101 (CA2 1997).

Tseng filed suit against El Al in 1994 in a New York state court of first instance. Her complaint alleged a state-law personal injury claim based on the May 22, 1993, episode at JFK. Tseng's pleading charged, inter alia, assault and false imprisonment, but alleged no bodily injury. El Al removed the case to federal court. The District Court, after a bench trial, dismissed Tseng's personal injury claim (See 919 F. Supp. 155 (SDNY 1996). That claim, the court concluded, was governed by Article 17 of the Warsaw Convention, which creates a cause of action for personal injuries suffered as a result of an "accident… in the course of any of the operations of embarking or disembarking." The Court stated that Tseng's claim was not compensable under Article 17.

Furthermore, in *Eastern Airlines, Inc. v. Floyd* (499 U. S. 530 (1991)) it was also held that mental or psychic injuries unaccompanied by physical injuries are not compensable under Article 17 of the Convention, but declined to reach the question of whether the Convention provides the exclusive cause of action for injuries sustained during international air transportation. At the outset, the court highlighted key provisions of the treaty we are interpreting. Chapter I of the Warsaw Convention, entitled "scope-definitions," which is declared in Article 1(1) that the Convention will apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. Chapter III, provides for entitled "Liability of the Carrier," which is also defined in Articles 17, 18, and 19 the three kinds of liability for which the Convention provides. Article 17 establishes the conditions of liability for personal injury to passengers as thus:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18 establishes the conditions of liability for damage to baggage or goods. Article 19 establishes the conditions of liability for damage caused by delay. Article 24, referring back to Articles 17, 18, and 19, that instruct thus:

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention (Ibid).

(2) In the cases covered by Article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights (Ibid).

The issue of compensation for bodily injuries sustained by passengers traveling in aircraft is also discussed in the famous case of *Sidhu and Others vs. British Airways Plc* ((1996) HL 5), where under such circumstances, Warsaw provides the exclusive remedy, and no separate common law cause of action exists. In another case *Wallace v. Korean Airline* (214 F. 3d 293-2000. See also *Shah v. Pan Am. World Servs., Inc.,* 148 F.3d 84, 92-93 (2d Cir.1998)). The facts are undisputed. On the evening of August 17, 1997, Brandi Wallace boarded KAL flight 61 in Seoul, Korea, destination of Los Angeles, California. It being the middle of summer, Ms. Wallace wore a T-shirt and jean shorts with a belt. Initially, the flight passed uneventfully. Ms. Wallace was seated in a window seat in economy class and fell asleep shortly after finishing her in-flight meal. Two male passengers sat between Ms. Wallace's window seat and the aisle of the airliner's cabin. Seated closest to Ms. Wallace was Mr. Kwang-Yong Park. Before she fell asleep, Ms. Wallace had neither spoken to Mr. Park nor given him the slightest indication that familiarity would be welcome. Nevertheless, about three hours into the flight, Ms. Wallace awoke in the darkened plane to find that Mr. Park had unbuckled her belt, unzipped and unbuttoned her jean shorts, and placed his hands into her underpants to fondle her. Ms. Wallace woke with a start and immediately turned her body toward the window causing Mr. Park to withdraw his hands. When Mr. Park resumed

his unwelcome amours, however, Ms. Wallace recovered from her shock and hit him hard. She then climbed out of her chair and jumped over the sleeping man in the aisle seat to make her escape.
At the back of the plane, Ms. Wallace found a flight attendant and complained about the assault. The attendant reassigned her to another seat. When the plane arrived in Los Angeles, Ms. Wallace told airport police about the incident, and they arrested Mr. Park. He subsequently pled guilty in the United States District Court for the Central District of California to the crime of engaging in unwelcome sexual conduct with another person in violation of 18 U.S.C. § 2244(b). In February 1998, Wallace brought an action against KAL in the United States District Court for the Southern District of New York alleging that KAL was liable for Park's sexual assault under the Warsaw Convention, which applies to all international transportation of persons, baggage, or goods performed by aircraft for hire (Warsaw Convention, 1929, Art. 1(1)). As modified by the Montreal Agreement, the Warsaw Convention makes airlines liable (up to a $75,000 limit per passenger) if the accident that caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking" from an international air flight. This is available under Article 17 of the Warsaw Convention, 1929.
It was held that is plain that the characteristics of air travel increased Ms. Wallace's vulnerability to Mr. Park's s assault. The court stated further that when Ms. Wallace took her seat in economy class on the KAL flight, she was cramped into KAL flight, she was cramped into a confined 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… It is undisputed that for the entire duration of Mr. Park's attack, not a single flight attendant noticed a problem. Other case laws where the issue of compensation for bodily injury as a result of aviation accidents include *Backlays v. British Airways Plc*, *Carmelo Labbadia v. Alitalia* ((2019) EWHC 2103), etc.

6.3. Liability of Carriers in Relation to Delay of Passengers
The Convention also states on Liability of carriers in relation to delay (Article 22 of the Montreal Convention). The Convention states further that the carrier is liable for damage occasioned by delay in the carriage by air of passengers. Nevertheless, The Convention also states that the carrier will not be liable for damage occasioned by delay if it proves that the carrier and its staff took all measures that could reasonably be required to avoid the delay or if it was impossible for the carrier to take such measures. In the case of damage caused by delay in the carriage of persons, the liability of the passenger is limited to 4150 SPD which is equivalent to Tanzanian shillings of United States Dollars 5000. The issue of liability of the carriers on cargo is also stated under the same Convention (*Ibid*, Article 22).

6.4. Cargo Liability in Aviation Industry
The Montreal Convention also guarantees the carrier liability on cargo and luggage. The Convention states that the carrier is liable for damage sustained in the event of the destruction, loss, or damage to cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air. The cargo or baggage is always in the liability of the carriers once tendered by the passengers (Giemulla, E., Schmid, R., Muller, W., Regula, R., Ott, D., Margo, R., 2010). In the carriage of cargo, the liability of the carrier in the case of destruction, loss, delay, or damage is limited to a sum of 17 SPD per kilogram which is equivalent to Tanzanian shillings of United States Dollars 20 per kilogram (*Ibid*, Article 22). This is also indicated under the Air Tanzania General Conditions of Carriage for Passengers and Baggage of 2019 (See Article 16.3**).**

6.5. Defenses of the Carriers under the Montreal Convention, 1999
The Montreal Convention also stipulates defenses that are available under this international aviation law (Article 20 of the Montreal Convention, 1999). The Convention states that the carriers will not be held accountable for any injury in various circumstances. These include but are not limited to, that the carrier and his agents took all the necessary measures/ steps to avoid the accident from occurring (Article 20 of the Warsaw Convention, 1929). It should also be proved that the transportation was not "international carriage". The event was not an "accident". The event occurred before embarkation or after disembarkation. The damage did not constitute "bodily injury." Another condition is where the plaintiff was contributory negligent (liability discounted by the plaintiff's fault). Another condition is where the claim was above the limit stated the carrier was not, negligent, or the damage was solely" caused by a third party.

7. Conclusion

Aviation history tells us that many efforts have been made by several aviation stakeholders to reach and achieve the current aviation developments. History also tells us that the current aviation developments were not simply and smoothly reached since as a matter of fact, hard efforts were employed by various stakeholders which the aviation carriers enjoy today. Since the time when the aviation industry started to be regulated, several changes have been also evident across the world. Each country in the world, URT, has ensured that the achievements so far reached in the aviation industry are well embraced and not ignored. This has increased the aviation carrier's efficiency, in offering services to their respective airline customers the services they deserve. The airline carriers feel responsible for whatever is directed under international aviation laws applicable in URT. The safety and lives of the passengers and their cargo are well protected under the Conventions and the airline carriers have always ensured that they are well complied as articulated. Domestic aviation laws in URT show a great coherence with international aviation laws and standards available under those Conventions are always respected. It is evident that an efficient aviation system is possible in URT through the serious involvement of all aviation stakeholders and compliance with the aviation laws in place, harmonized with domestic laws.

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