AN APPRAISAL OF COMPENSATION REGIME FOR VICTIMS OF AIRCRAFT INJURIES UNDER THE LAW

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ABSTRACT

This essay aims to examine the legal regulations governing aircraft operations liability. It is known that a claimant must meet the requirements of Article 17 of the Montreal Convention, 1999 in order to be eligible for compensation in aviation claims. This means that the claimant will not be able to get compensation for injuries sustained in situations that do not comply with the rules of the Convention. This supports the idea that the aviation legal regime applies only to claims that cannot be divided into separate categories under the applicable legal rules. The focus of this paper, which employs the doctrinal research methodology to examine the laws in order to determine the justification for the exclusivity of the legal regimes, cannot be said to be the same, given the circumstances that gave rise to that position of the law, which is the desire to shield the then-developing aviation industry from severe liability for claims arising from accidents. The study also questions whether or not it is preferable to create a commission to monitor such payments and whether or not airlines promptly respond to aviation claims when such compensation is mandated by statutes without proof of guilt.

Keywords**:** Appraise, Compensation, Regime, Victims, Aircraft Injuries

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INTRODUCTION

It is impossible to overstate the role that air travel plays in the socioeconomic development of our modern society. In other words, there is no substitute for air travel in the social and economic activities of modern civilization. It is well known that shipping was the only way of mass worldwide transportation of goods and people before to the invention of air travel, which unleashed an unparalleled level of globalization. Since air travel now connects every place on Earth, the world has become smaller and more interconnected than ever before, allowing people from all over the world to exchange ideas, cultures, and much more[i]. Shipping services, which were formerly a favored mode of transportation, have been effectively eclipsed by air travel. The once-proud luxury airlines have been largely displaced by Boeings, Air Buses, Concords, etc. [ii] The resulting rise in air travel has also been accompanied by an increase in aviation disasters, which, while relatively few in number, are distressing in terms of the lives lost and the property damage they cause, including to aircraft.

In light of the inherent possibility of losses or damages resulting from the operation of aircrafts, the law has established provisions aimed at relieving or compensating the victims of aircraft accidents, the number of damages that can be recovered, and the conditions under which damages are payable. The purpose of this study is to evaluate the compensations regime, the eligibility for such compensation, its timely or other payment, and whether or not statutory protections for such payments exist. The purpose of this study is also to determine if sanctions are in place to force airlines to meet their obligations regarding rapid payment of compensation. We shall then examine or evaluate the legal provisions governing compensation for victims of aircraft accidents as a result of this. But it would be wise to look more closely at a few of the ideas covered in this work's subject.

CONCEPTUAL CLARIFICATIONS

The ideas of injuries, airplanes, compensation, and victims, among others, will be explained. According to one definition, "injuries" or "injury" refers to the wrongdoing or unfairness of violating another person's legal rights for which the law gives a remedy. Additionally, if injury is caused to another person, their reputation, or their property, it refers to anything said or done in violation of a responsibility not to. Real injuries (like wounds) and verbal injuries are two categories of injuries (such as slander). They could be civil wrongs, like defamation, or criminal wrongs, like assault. [iii] It also denotes physical injury or harm[iv].

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Any vehicle that can fly and transport cargo or people is a "aircraft." [v]. Additionally, it refers to an air-traveling device. [vi].

'Compensation'. The term compensation refers to payment for services provided, including salary or wages as well as additional perks. Additionally, it refers to any action that a court directs a party that has injured another to take, such as paying compensation or performing another task. [vii].

'Victims'. A victim is someone who has been hurt due to a crime, a tort, or another injustice. [viii]

INJURIES CAPABLE OF COMPENSATION UNDER AVIATION LAW

The airline sector is extremely concerned with the requirement to offer adequate compensation for passengers in the case of injuries to their person or luggage during the journey. This goes along with a related concern to safeguard the airline sector from fictitious or exaggerated claims from claimants. As a result, a legal framework or rule for compensating people injured in incidents involving airplanes or those who suffer other types of harm has been developed. There are numerous ways that injuries can happen in airplanes. This could happen as a result of defective machinery leading to mishaps, unanticipated turbulence, crammed overhead bins, ships and falling tight interior, etc. [ix] It might also result from intentional or ineffective management on the side of the carrier or its staff. The Warsaw Convention [x] and its revisions govern liability and compensation for injuries sustained aboard aircraft. The Convention is applicable to all commercial international air transportation of people and luggage. [xi] The Convention defined an international carriage to which the Convention applies as any carriage in which, pursuant to the agreement between the parties, the point of departure and the point of destination, whether or not there be a break, are situate within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed place of stoppage within the territory of another state, even if that other state is not a High Contracting Party. [xii] According to Article 17, the carrier is responsible for any damage incurred in the event that a passenger dies or is injured, or if a passenger suffers any other type of physical harm, if the accident that resulted in the damage occurred on board the aircraft or during any of the embarking or disembarking operations. According to Article 18 of the agreement, the carrier is responsible for any loss, destruction, or damage to the goods.

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MEANING OF ACCIDENT UNDER THE CONVENTION

It's crucial to take into account how accidents are defined in Article 17 of the Convention. This is due to the fact that an accident, not a "incident," must have occurred in order for compensation to be granted under the Convention. According to the United States Supreme Court, a "accident" is any unanticipated or unusual event or occurrence that occurs outside of the passenger's control[xiii]. A pre-existing medical condition that has worsened will therefore not be considered an accident for the purposes of filing a claim under the convention. The courts disagree on the question of whether a terrorist act qualifies as a "accident." [xiv]. In contrast, the House of Lords ruled, in the English case of *Sadhu v. British Airways,*[xv] that a terrorist strike qualifies as a "accident" under the Convention since it was an unexpected occurrence that was neither anticipated nor contemplated at the time it occurred.

The incident that resulted in the fatal injury for which compensation is being sought must have physically hurt the claimant. The Convention does not provide for compensation for claims for mental distress made in the absence of physical or bodily harm brought on by the accident. [xvi] In the case of *Krys v. Lufthansa German Airlines,*[xvii] a passenger who had a heart attack on a transatlantic flight from Miami to Frankfurt sued the airline, alleging that failure to land the aircraft so that he could go to the hospital before the scheduled flight arrived in Frankfurt had caused further damage to his heart. The US Court of Appeal for the Eleventh Circuit came to the conclusion that the aggravated injury in this case was not brought on by a "unusual or unexpected event or happening that is external to the plaintiff" and did not, therefore, qualify as an accident under the terms of the Convention. This was based solely on the fact that the flight was continued to its scheduled point of arrival. The same result was reached by the court in *Abramson v. Japan Airline*[xviii] where the plaintiff sued the airline for refusing to seat him in first class so he could lay down and have his wife massage his stomach to induce vomiting while suffering from *Para esophageal haital hernia,*[xix] to induce vomiting which was refused. The plaintiff argued that the defendant's failure to help him made his injury worse. The court determined that a pre-existing injury that worsens during a routine flight should not be regarded as an accident under Article 17 of the Convention. The harm must have been caused by an external event, not by the passenger's internal response to the expected flight reactions. [xx] *In Olympic Airways v. Husain,*[xxi] the passenger's asthma triggered by second-hand smoke caused his death, a consequence suffered by no other passenger on the flight. Justice Scalia wrote:

> Simply because a legal interpretation has negative consequences does not make it erroneous.

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> The Convention forbids a remedy unless there has been a "accident," even when egregious behavior and severe harm have taken place. Whatever that phrase means, "outrageous action that causes serious injury" is not what it means. It is incorrect to presume that whenever traditional tort law would do so, the convention must also offer a remedy. Instead, one of the main goals of the agreement was to encourage the development of the nascent airline business by limiting the circumstances in which passengers may file lawsuits. … No culpability exists unless there has been an accident, regardless of how minor the claim may be. or screams out for justice.

In more recent cases, the Ninth Circuit Court of Appeals for the United States determined that an airline employee's seizure of a 75-year-old passenger's bag, which contained her life-sustaining breathing equipment and related medication, was an accident[xxii].

On the other hand, an incident refers to a circumstance other than an accident connected with flying an aircraft that has an impact on or may have an impact on operational safety. [xxiii]

COMPENSATION UNDER THE CONVENTIONS VIS-AVIZ JUDICIAL DECISIONS

The rules of the Convention only apply to international transport or undertakings for compensation, according to Article 1 of the Convention. The Convention provides compensation for certain types of injuries, such as fatalities or serious physical harm to passengers, as well as the loss or damage of luggage or cargo. Regulations are also in place to protect consumers. Throughout this paper, each of these will be addressed in turn.

The Hague Protocol and the Montreal Agreement,[xxiv] limits as well as the Warsaw Convention, limit an air carrier's responsibility to $75,000 in damages for each passenger's death or injury. [xxv] If it can be demonstrated that the carrier engaged in willful wrongdoing, the liability limitation on the air carrier is unenforceable, therefore a claimant may be awarded more money than the cap[xxvi]. Punitive damages should be recoverable despite the cap on recovered damages, according to several arguments [xxvii]. The Court in the American case of *Floyd v. Eastern Airlines, Inc.*[xxviii] was of the view that punitive damages are not recoverable under the Warsaw Convention. The cases of *In Re Air Disaster at Lockerbie, Scotland*[xxix], and *Re Korean Air*

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Lines Disaster of September 1, 1983 (Korean Airlines Disaster[xxx] which adopted the same logic to the effect that punitive damages are not recoverable under the Warsaw Convention, were made in response to this ruling. According to the court's conclusion, punitive damages serve no purpose other than to punish the wrongdoer and discourage such wrongdoing, not to make up for the wounded plaintiff's losses.

In addition, the court determined that although if Article 25 of the Convention absolves the carrier from the benefit of the liability cap, the clause did not establish a separate right of action for punitive damages. [xxxi]

According to the Warsaw Convention's article 17, the carrier is responsible for paying damages in the event that a passenger dies, is injured, or suffers any other type of physical harm if the accident that resulted in those damages occurred on board the aircraft or during any of the embarking or disembarking procedures [xxxii]. Since the term "accident" was not defined by the Convention, the US Supreme Court adopted it in the case of *Saks v. Air France* [xxxiii]. Saks filed a lawsuit in that instance, alleging damages for the permanent hearing loss she suffered as a result of cabin pressure changes while traveling on an Air France flight. Because she was unable to demonstrate that the operation of the airplane was defective or out of the ordinary, the court determined that her claim could not be separated under Article 17. The court of appeals overturned the ruling, finding that the Montreal agreement and the Warsaw Convention's language, history, and policy impose on airlines absolute liability for injuries directly caused by the inherent risks of air travel and that normal changes in cabin pressure qualify as accidents under the Warsaw Convention. [xxxiv] The term 'accident,' according to the court, refers to any incident involving the operation of an aircraft that occurs between the time someone boards the aircraft with the intention of taking off and the time that person disembarks from the aircraft. However, the ruling was overturned on subsequent appeal to the US Supreme Court, which found that liability under Article 17 of the Warsaw Convention only exists if a passenger's injury is brought on by an unexpected or extraordinary event or occurrence that is external to the passenger. [xxxv] In a similar vein, because the convention uses the term "bodily injury," a claimant cannot receive compensation for mental injuries. However, in *Ehrlich v. American Airline*[xxxvi], the US court did rule that damages are recoverable when a person suffers a mental injury as a result of physical or bodily harm. The Warsaw Convention's original goals, one of which was to foster industry growth by limiting the responsibility of airlines for passenger death or injury, lay the groundwork for the courts' ambivalence against awarding punitive penalties [xxxvii].

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As stated in Article 17's provision, the incident that resulted in the death or injury must have happened on board the aircraft or when boarding or disembarking in order for the carrier to be held accountable to the passenger. Divergent opinions exist regarding what, according to the provisions of the Convention, counts as embarkation and disembarkation. One school of thought holds that the term's geographic restriction was intended to only apply to the ramp or other similar mechanism for boarding and egressing aircraft[xxxviii]. The Convention, according to the preponderance of the evidence, did not just take passengers on ramps into consideration; it also did so for those who happen to be on the traffic apron. This procedure of getting passengers from the terminal to the aircraft and back is referred to as embarking or debarking. In *Macdonald v. Air Canada*[xxxix], a case from the United States, the court determined that a passenger had disembarked for the purposes of Article 17 of the Convention when they exited the aircraft and left the terminal building. However, the court determined that the phrase "in the court of any of the activities of embarking" did not clearly exclude accidents that occurred inside a terminal structure[xl]. This logic was refuted by the latter instance, when the court determined that in the event of products and baggage, responsibility should attach inside the terminal building and not to the passenger. [xli]

Technical interpretation has been utilized to determine how the word "Accident" should be used in the Convention. In *Husserl v. Swiss Air Transport Co. Ltd*[xlii], The question was whether the hijacking of a Swiss plane after takeoff from Zurich, which caused a forcible landing in the Jordanian desert, would qualify as a 'accident' that subjected the carrier to liability under the Convention. Given that the Montreal Agreement imposed "total culpability" with or without fault or negligence, the court held that hijacking was a "accident" in the air. The decision has drawn flak for being overly broad and presenting a too expansive interpretation of the Montreal Agreement.[xliii] According to the critic, it was incorrect for the court in Husserl to base its judgment on the claim that the Montreal Agreement did not alter the language defining the carrier's liability under Article 17 but instead simply named the carrier's prior right to assert the defense of due care, which was stated in Article 22,[xliv] while challenging the district court's ruling that it is "permissible" to read a treaty in ways that were obviously not envisaged at the time by looking at the parties' subsequent behavior. It was incorrect to argue that the Montreal Agreement's provisions on sabotage may be taken into account when deciding whether related crimes like hijacking should be covered by the Convention. This is so because the Convention is an international agreement, whereas the Montreal Agreement is a deal between the United States and specific airlines. As a result, it is questionable whether the court's ruling in Husserl

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v. Swiss Air Transport Co. Ltd. (supra) can be regarded as a legally binding precedent given that it was based on the interpretation of a document called the Montreal Agreement that is not a treaty and is instead just an agreement between the United States and a number of carriers that operate in the United States of America.

In the case of *Day v. Trans World Airline*[xlv] the court based the carrier's liability on the fact that the passengers were under the airline's specific control [xlvi] while in the transit lounge and waiting in line at the departure gate. This control resulted in a risk to the passengers. The airline should be charged for the risk associated with the control after the court imposed a control that determines the location of the passengers [xlvii]. However, if the catastrophe happens after the passenger has disembarked from the aircraft and was safe inside the terminal building, the carrier will be held accountable under domestic law [xlviii] rather than the Convention. The third circuit ruled in *Evangeline's v. Trans World Airlines Inc.* [xlix] after the Supreme Court's decision in the Day case determined that accidents happening inside terminal buildings are not exempt from article 17 coverage. In the Evangelino case, the court's reasoning was inspired by the "controlled activity" test combined with the "strict location" test, but it came to the conclusion that the "controlled activity test" was preferable because of its adaptability to the current risks of air travel.

However, despite the fact that the strict location test and the control activity test were the deciding elements in establishing liability for cases involving embarkation, as was the case in the cases of Day and Evangeline, these facts had no bearing on the courts' determination of liability for accidents or injuries resulting from disembarkation. In *Macdonald v. Air Canada*[l], the court decided that because the injured passenger had arrived at a safe location inside the terminal, he was no longer eligible for compensation under Article 17. Similarly, in *Klein v. KLM Royal Dutch Airlines*[li], that a passenger who got safely inside the terminal building before he was hurt by a piece of luggage had exited prior to his injury in accordance with Article 17[lii] of the Convention. The Warsaw Convention failed to define the terms, which resulted in the seeming ambiguity and differences in how embarkation and disembarkation were constructed or interpreted. It was important, in light of judicial attitude, to define the right scope of embarkation and disembarkation within the meaning of Article 17 of the Convention. [liii] Also to be emphasized is the requirement that the incident that resulted in the damage or death under Article 17 occurred during an international carrier or mode of transportation in order for the Warsaw Convention's liability regime to be in effect. International transportation is defined as any flight where both the point of departure and the destination are either within the territories

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of two high contracting state parties to the Convention, or within the territory of one high contracting party if there is an agreed stopping place within another country (regardless of whether that other country is a party to the Convention)[liv]. For the purposes of the convention, air travel between a High contracting party and a nation that is not a High contracting party is not considered international travel. Similarly, even though the flight path crosses international airspace or the high seas, a flight from a High contracting state to one of its territories or possessions is not considered an international flight. [lv]

RECOVERABLE DAMAGES UNDER ARTICLE 17 OF THE CONVENTION

Damages for emotional injuries are not recoverable under the Convention's spirit or wording. The courts have come to the conclusion that, before to 1929, the majority of civil or common law jurisdictions did not provide for the collection of emotional damages after reviewing the draft of the Convention. The court [lvi] specifically came to the conclusion that in order to recover under Article 17 of the Convention, there must be either death or bodily harm; emotional losses alone are insufficient. [lvii] However, when the court in that decision stated, "We express no view as to whether passengers can recover for mental injuries that are accompanied by bodily injuries," it gave rise to some confusion about its position. According to Bonlee's assessment, this remark unleashed a wave of legal action. [lviii]. In light of this, it follows that a physical damage must be the physical expression of a mental injury in order for it to support a valid cause of action under Article 17. To put it another way, the passenger must experience emotional harm that ultimately results in physical harm or bodily impairment. However, the Court ruled in a case involving a crash on an aborted takeoff at John F. Kennedy International Airport that damages are not from the accident but rather from bodily injury [lix]. This case exemplifies US international aviation law's rule that recovering damages for emotional harm is only permitted to the extent that the emotional harm was brought on by actual physical harm [lx].

It would seem that the court's stance in the United Kingdom is more appropriate. While acknowledging that compensation for pain brought on by physical injury is recoverable, the House of Lords went on to say that the threshold for bodily injury is met if an accident results in mental injury or illness, which in turn brings on adverse physical symptoms like strokes, miscarriages, or peptic ulcers.[lxi]

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The Warsaw Convention was created to address the issues that the airline industry, which was only starting off, was facing. The Convention set limits on both the circumstances that would result in airline liability and the monetary amount that would be due upon liability in order to avoid air accidents liability from financially destroying the industry. [lxii] Under the convention[lxiii], liability of the carrier for death and injury was limited to 125,000 '*Poincare Francs*'[lxiv] or approximately $8,300 per passenger. Later, in response to international pressure to enhance the liability limit of the Warsaw treaty, this was raised to 250,000 Francs (about $16,6000). This was accomplished in the 1955 The Hague conference that produced The Hague Protocol. If it could be demonstrated that the carrier had "taken all necessary precautions to avoid the damage or that it was impossible for the carrier to take such measures," the carrier would be released from obligation under the treaty. [lxv] The legal basis for the carrier's liability under the Warsaw Convention is "fault liability" with a reversed burden of proof. [lxvi] This implies that the carrier must prove his innocence before the plaintiff's burden of proof is assigned. [lxvii]

The carrier's obligation is only up to 125,000 France for a passenger's death or injury, as was already mentioned. There are occasions though, where the carrier's liability might be unlimited. This includes situations when the carrier has engaged in wilful misconduct or another default that the court deems to be on par with willful misconduct. [lxviii] However, the definition of "willful misbehavior" was not included in the Convention. As a result, over the years, judicial opinion regarding the phrase's meaning has been sought. It is known as "the worldwide performance of an act with knowledge that the conduct would certainly cause injury or damage or with reckless disregard to the probable effect of such act," according to legal definitions in the United States. [lxix]

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It is challenging for the plaintiff to successfully rely on this provision in jurisdictions where willful misconduct is defined as an action taken intentionally to cause harm because it is difficult to imagine that a pilot would intentionally cause a crash given that the pilot's own life will be at risk. [lxx]. The acceptance of a passenger by the carrier even if the passenger's ticket has not yet been delivered would also result in unlimited responsibility for the carrier.

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The situation is the same if the carrier accepts luggage without first receiving a luggage ticket or if the luggage ticket does not include the information specified in paragraphs (d), (f), and (h) of Article 4(3) of the Convention. In either case, the carrier will not be eligible to benefit from the Convention's provisions that limit or exclude the carrier's liability.[lxxi]

Further, by virtue of Article 21 of the third schedule to the Act,[lxxii] for damages arising under paragraph 1 of Article 17 not exceeding 100,000 USD for each passenger, the carrier shall not be able to exclude or limit its liability. It should be noted that under Article 21, the carrier shall not be liable for damages arising under Article 17 to the extent that they exceed for each passenger $100,000 USD, provided that the carrier is able to prove that such damage was not caused by the negligence or other wrongful act or omission of the carrier or its servant or agent or that such damage was caused solely by a third party. By establishing a two-tiered culpability scheme in cases of death or harm to a passenger on board the aircraft, the Montreal Convention effectively repealed the liability limits imposed by the Warsaw Convention. Therefore, in Nigeria, if the victim's claim does not exceed $100,000 USD, the carrier's liability is strict and does not admit of any defense; however, if the victim's claim exceeds $100,000 USD, the carrier may only limit its liability if it can prove, through evidence, that the victim's death or injury was not caused by the carrier or its agent's negligence or another wrongful act or omission, or that it was caused solely by a third party[lxxiii]. This is so that the airlines' defense of "due care" was renounced by the Montreal Convention, which also made the carriers' liability absolute in the absence of passenger negligence.[lxxiv]

The clause in section 48(3) of the Civil Aviation Act of 2006 is noteworthy. It states that the carrier must make an advance payment of at least $30,000 (thirty thousand United States Dollars) to the natural person or such natural persons who are entitled to claim compensation within 30 (thirty) days of the date of such accident in order to meet their immediate economic needs. Such advance payments shall not constitute recognition of liability and may be withheld in certain circumstances. Despite how admirable this clause is; it does not have a clause to ensure compliance because there is no penalty for breaking the law. There is a gap there that has to be filled.

COMPENSATION FOR CANCELLED/OR DELAYED FLIGHTS

Carriers are responsible for compensating each passenger for delay-related damages in accordance with Article 22 of the Convention, and Part 19 of the NCAA Consumer Protection Regulations applies to domestic flights. [lxxv] This guarantees both the rights and obligations of

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passengers and the airlines' duty to them. This includes clauses addressing compensation for airline delays, cancellations, and boarding denials.

According to the regulations,[lxxvi] an operating air carrier has a duty to inform passengers of the reasons for the delay within 30 minutes of the scheduled departure time and to provide refreshments like water, soft drinks, confections/snacks, and access to phone calls, sms, and email services after two hours of the scheduled departure time.

When a flight is cancelled or delayed between the hours of 10 pm and 4 am, or at any time the airport is closed at the point of departure or destination, the passenger is entitled to a meal, hotel accommodations, and transportation between the airport and place of accommodations. If the delay is longer than two hours, the passenger is also entitled to an immediate cash refund for the flight fare. The passenger may also be entitled to 25% of the cost of the ticket in lieu of immediate cash repayment. [lxxvii]

It is crucial to know that all domestic and international flights are subject to the Nigeria Civil Aviation Regulations. The regulation specifies the minimum rights, obligations, and responsibilities of both passengers and airlines. The following incidents are addressed by the Regulations:

i. No-shows and excessive flight booking
ii. refused boarding in defiance of the passenger's wishes.
iii. Scheduled flight delays
iv. No-show flight
v. Under the clause, claims for delayed, damaged, and lost baggage may be enforced. of the Montreal Conventions, 1999, which has been domesticated by the Civil Aviation Act, 2006, and is now a component of the Act.

When an airline flight departs or lands after its planned time, it is considered to have had a delay. As previously mentioned, the airline is required to offer food and beverages appropriate for the time of day, as well as a way to inform passengers of the delay or a reimbursement for any necessary phone calls.

Passengers on domestic flights are promised a specific degree of compensation under Nigerian law under part 19 of the NCAA, Consumer Protection Regulations, subject to the following Rules, in the event that they are denied boarding or their aircraft is delayed.

i. The flight must take off from and land in Nigeria's domestic territory.
ii. The traveler must have a confirmed reservation on the delayed flight.

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iii. The passenger must have shown up for check-in at the designated time, or if no time is specified, no later than one hour before the scheduled departure time of the aircraft.

The European Passengers' Rights Regulations (EC 261/2004), which guarantees compensation and care for a flight cancellation for passengers traveling from EU airports or arriving at EU airports with an EU airline, also offer compensation for international flights. The passenger flight must have been scheduled to depart or arrive from the United Kingdom, the European Union (EU), Iceland, Liechtenstein, Norway, or Switzerland for the EU law to be applicable. For flights that are delayed for more than four hours, passengers are eligible to compensation up to £600. If an overnight stay is necessary due to a total cancellation of the trip, hotel accommodations must also be paid for by the airline. However, the airline must be excused from issuing refunds in the event of an extreme condition that causes the flight to be delayed or cancelled, such as war, civil unrest, a strike, a general grounding of flights by the government, or security concerns. Additionally, the airline will not be held responsible if the passengers are advised of the flight cancellation at least 14 days in advance.

In the case of *Mekwunye v. Emirates Airline*[lxxviii], the legal implications and remedies for the cancellation of the trip were carefully addressed. In that instance, the Appellant bought a ticket from the Respondent, Emirate Airlines, to travel from Texas, Texas, in the United States, to Lagos, Nigeria. The Respondent had sent the Appellant a ticket ahead of the stated departure date. The Respondent confirmed the authenticity of the ticket after being contacted three times by the Appellant to confirm its validity. The appellant was denied boarding on the day of the flight because the ticket had been canceled, according to the airline. Following the disappointment, the Appellant experienced from the Respondent, the Appellant was forced to purchase a second ticket from a different airline to enable her to travel to Lagos, Nigeria, her intended destination. The Respondent failed and neglected to provide an alternative means for the Appellant, as well as any lodging or food. The Appellant was outraged by the Respondent's behavior and gave her attorney the task of writing to the Respondent and demanding the money she claimed to have paid for the two tickets. The Respondent paid $1,777,000 in what was ostensibly a ticket refund for themselves. It refused to give back the American Airlines ticket (the other airline's ticket) and made no attempt to do so. The $1,777,000 claimed to be the Respondent's ticket refund was denied by the appellant's attorney. In a case brought before the Federal High Court, the court determined that there is no cap on the defendant's culpability because the respondent's (Defendant) refusal to transport the appellant from Dallas constitutes a breach of the contract for carriage of the plaintiff (Appellant). As a result, the Court mandated

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that the Appellant receive a full ticket refund, free of any deductions or fees. Additionally, the court awarded the appellant N250,000 (two hundred and fifty thousand Naira) in legal fees and N2,500,000 (two million, five hundred thousand Naira) only in general damages.

On appeal, the Court of Appeal determined that the learned trial judge committed a legal error by awarding N250,000 (two hundred and fifty thousand naira) as legal expenses. The trial court should not have awarded general damages after ordering the ticket's refund, the court ruled, because doing so would have amounted to double compensation in violation of the Montreal Convention of 1999. In an effort to overturn the Court of Appeal's ruling, the appellant filed an appeal with the Supreme Court. Almost all of the issues were accepted by the Supreme Court, which also reinstated the trial court's decision. The passenger was forced to incur additional costs by purchasing a more expensive ticket for a longer route, as well as to endure embarrassment, stress, and inconvenience for two days of being stranded. The Supreme Court found that the Respondent was in flagrant breach of the contract when it unreasonably denied boarding to a confirmed passenger for no good reason, without prior notice, and without explanation. This allows the appellant to general damages as well as the reimbursement of the ticket. Reasoning further, the Supreme Court held that it would be unfair and unjust for the Respondent as a carrier, to merely refund the flight ticket without compensation or general damages for the loss of time, stress, embarrassment and inconveniences she suffered in consequences of the breach of contract by the Respondent. In reaching its judgment, the Court acknowledged the principle of contract law that states a party that violates a basic provision of a contract cannot rely on an exclusion clause.

LIABILITY FOR BAGGAGE AND CARGO LOSS OR DAMAGE

The carrier is responsible for any damages incurred in the case of checked luggage destruction, loss, or damage under Article 17(2) of the Montreal Convention, 1999. This is subject to the requirement that the destruction, loss, or damage resulted from an incident that happened inside the aircraft or while the luggage was in the carrier's care. But in the following scenarios, the carrier possesses defenses;

i. that the baggage's intrinsic flaw, fault, or vice caused the harm.
ii. It was brought on by improper cargo packing done by someone other than the carrier, its servant, or agent.
iii. that a war or other violent conflict was the root of it.

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iv. an act of official authority done in relation to the entry, exit, or transportation of the goods.

v. either it was impossible for the carrier or its servants or agents to take the steps that would have been reasonably necessary to prevent the damage. [lxxix]

The carrier, however, can only be held accountable if the damaged item was caused by their error or the error of one of their servants or agents when it comes to unchecked baggage, including personal belongings. The maximum responsibility of airlines for lost baggage was altered by the Montreal Convention and increased to a fixed value of 1,1317 SDR (Special Drawing Rights) per checked item. According to the treaty, airlines must pay passengers the entire cost of replacing any products they purchase up to the time their luggage is delivered, up to a maximum of 1,131 SDR. [lxxx]

In the event that cargo is destroyed, lost, or damaged, damages may be recovered under Article 18 of the Montreal Convention, provided that the occurrence that caused the damage occurred while the cargo was being transported by air. If the carrier can demonstrate that the destruction, loss, or damage to the cargo resulted from one or more of the following, the carrier will effectively be released from liability;

i. a flaw, fault, or other inherent characteristic of the cargo.

ii. improper cargo packing done by someone other than the carrier, its employees, or its agents.

iii. a war or other violent conflict

iv. an act of public authority completed in relation to the entry, exit, or transportation of the goods.

The compensation due upon liability evidence is equal to that for lost luggage described above[lxxxi]. It should be emphasized that, in accordance with the convention, any delayed baggage over 21 days is considered lost, even if the airline eventually delivers it. [lxxxii]

DAMAGE CAUSED BY AIRCRAFT IN FLIGHT TO PERSONS OR PROPERTY IN THE AIR

As of right now, it appears that there is no international convention in existence to address aerial crashes. As a result, conflict of law principles must be used to resolve the difficulties. [lxxxiii] It is proposed that the domestic legislation of the country where the collision occurs may be used as the *lex loci delicti.* [lxxxiv] However, in the event of a high sea crash, it may be the

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state's law that is most closely related to the provision of air traffic services for the involved aircraft that will be in force. [lxxxv] It has been argued that the legislation of the state of registration should apply if the collision involves two airplanes that are both registered in that state. [lxxxvi] There are no laws in Nigeria that address harm done to people or property in the air as a result of an aerial collision between two aircraft that are registered in Nigeria and are flying within Nigerian airspace. The common law would have to be consulted. negligence-related tort in that area.

The Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, sometimes known as the "Rome Convention," was signed in Rome on October 7, 1952, and it governs damage to people or property on the surface brought on by aircraft in flight. Nigeria accepted the Convention on March 6, 1970, but on May 10, 2002, it issued an instrument of denunciation, which became effective on November 10, 2002. The result of the denunciation is that domestic Nigerian laws, not the Convention, will govern liability in cases where an aircraft, whether Nigerian or foreign, damages a third party on the surface within Nigeria, putting a severe burden of proof on the claimant in accordance with S.131(1) of the Evidence Act, 2011 which states that "anyone seeks any court to render judgment as to any legal right or liability reliant on the existence of facts which he assets shall prove that those facts exist".

It is implied that placing such a load on a defenseless plaintiff can only be excruciating. This is especially true given that Nigerian law offers no statutory protection for harm to third parties resulting from damage caused by airlines. While there are legal measures covering compensation for passengers and cargo consignees, there are none that ensure reimbursement for third parties. The Civil Aviation Act's Section 49(2), which states that when an object or a person in or falling from an aircraft causes injury, loss, or damage to any person or property on land or in water while the aircraft is in flight, provides what appears to be some kind of provision for a third party under the Act The Civil Aviation Act's Section 49(2), which states that when an object or a person in or falling from an aircraft causes injury, loss, or damage to any person or property on land or in water while the aircraft is in flight, provides what appears to be some kind of provision for a third party under the Act.

Although it might seem that the provision opened up a window for a third party to sue for damages for losses or injuries, there is no assurance that this third party will be able to recover any money, and there is no description of how severe the injuries must be to determine the amount of compensation and specifications that must be paid. Because it is the rule that specifics of exceptional damages must be claimed and shown, this has the effect of limiting the

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claimant's capacity to obtain damages. The Supreme Court ruled in *British Airways v. Mr. P.O. Atoyebi,*[lxxxvii] that, unlike general damages, special damages must be specifically pleaded and strictly proved. The risk associated with this legal position is that a third party of air accident victim who cannot establish his claims in accordance with the legal standard would suffer loss. A situation like this can be prevented if the aviation legal framework includes provisions that outline the recoverable damages for third-party victims of air tragedies.

As was said above, even though both Conventions are solely applicable to International Air Carriage, the near-savaging situation that developed in 1970 when Nigeria adopted the Rome Convention on March 6, 1970, was not absolute due to Nigeria's reluctance to ratify the Montreal Protocol. The fact that Nigeria signed an instrument of denunciation of the Rome Convention on May 6, 2002, resulting in Nigeria's cessation as a party to the Convention, made the efforts of the Nigerian government in all of these more futile. This indicates that no third party in Nigeria could have been in a position to benefit from the Convention's provisions, even if the Convention had adequately addressed the interests of third parties who were victims of air disasters in the absence of domestication prior to the denunciation.

This is especially true given the technical nature of aviation claims, which necessitates expert testimony in order to satisfy the burden of proof. An ordinary applicant might not be able to afford this easily. In this regard, an intentional legislative intervention that broadens the application of the provisions of the Civil Aviation Act to third parties will be justified. In this regard, S. 48(3) of the Act [lxxxviii] should be expanded to cover all claims, including passengers and third-party victims of air accidents.

In any instance where an aircraft accident results in a passenger's death or serious injury, section 48(3) specifies that the carrier must provide an advance payment of at least US $30,000 (Thirty Thousand United States Dollars) to the natural person or persons who are entitled to compensation within 30 days of the date of the accident in order to cover those individuals' immediate financial requirements. In addition to the US $30,000 (Thirty Thousand United States Dollars) stipulated for payment in the event of death not being sufficient given the current economic situation, the law did not include provisions in the Act to ensure prompt payment as there are also no measures to compel timely compliance by the carriers with the provision of s. 48(3), as admirable as it may appear.

S. 49(2) of the CAA is another provision that might have helped a third party victim of aircraft accident, but it is sadly not detailed enough to cover aircraft accidents in this situation.

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According to s.49(2), damages in respect of an injury, loss, or damage to a person or property on land or water caused by an article or person in or falling from an aircraft while it is in flight, taking off, or landing may be recovered without proving negligence, intention, or any other cause of action, just as if the owner of the aircraft had committed a willful act, negligence, or default that resulted in the injury, loss, or damage.

It is quite alarming that s.49(2) CAA only mentions damage brought on by objects or people getting into or falling out of aircraft while they are in flight, leaving out damage caused by the aircraft itself. Contrary to s.49(2), Article 1 of the Rome Convention expressly mentions damage caused by an aircraft in flight or by anyone or anything falling from it. Whereas it refers to damage that occurs "because of the aircraft, engine or propellers or the flight of or an object falling from the aircraft engine or propeller," s.49 U.S.C. S. 441112(b), which is an equivalent provision of American law on the matter, contains a more elaborate provision that effectively accommodates the third party victim of an aircraft accident.

We contend that the exclusion of "damage caused by aircraft itself" from the definition of "damage caused by aircraft itself" in the provision of s.49(2) of the CAA is evidence of the legislative dishonesty that characterizes some English laws passed prior to October 1, 1960, which the imperialist British government extended to Nigeria with the intention of exploiting the Nigerian people through legal means. In order to include a "accident caused by aircraft itself," s. 49(2) need to be modified. An airplane may injure someone or damage property during taxing, taking off, or landing if it collides with individuals, animals, other aircraft, airport vehicles, equipment, or structures[lxxxix].

In this situation, claims arising therefrom may be governed by either common law or legislation. The airplane itself is not covered by Nigerian law's liability [xc] provisions for harm brought on by items or people falling into or out of aircraft during takeoff or landing[xci]. This seems to be a result of the Act's phrasing, which did not extend liability to the aircraft where the object or person is or is falling from. According to others, this leaves a gap that needs to be filled by amending the relevant part of the Act.

To get damages for such harm, a victim of an accident or injury under s. 49(2) of the Act would have to claim under the tort of negligence.[xcii] According to our legislation, the claimant would have to fight the burden of proof in order to succeed.[xciii] In order to prove that the airplane was negligent, the claimant must present reliable and admissible proof. Under tort law, negligence is a civil actionable wrong. According to Lord Wright in *Lochgelly Iron & Co v Mulbin*, 'negligence[*xciv*] includes more than heedless or careless behavior, whether in omission or

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commission; it properly connotes the complex idea of obligation, breach and damage consequently experienced by the person to whom the duty was owing'. The Supreme Court of Nigeria defined 'negligence' as the failure to take action that a reasonable person, guided by the usual considerations that ordinarily govern human affairs, would take, or the performance of an action that a reasonable and prudent person would not take. In *Mrs. Esther Ighreriniovo v S.C.C Nigerian Limited & Ors.*[xcv] It is behavior that is below the legal standard for protecting others from irrational risk of harm; a departure from the behavior expected of a reasonable prudent person under similar circumstances; a breach that results in a loss; and strictly a factual issue that must be resolved in the context of its specific facts. In addition to proving a breach of duty of care, the claimant must also allege and present evidence to demonstrate that he was injured as a result of the defendant's negligence. [xcvi] The Court of Appeal determined that carelessness is a factual, not a legal, issue in that case. Therefore, as pleading is a need for the development of a claim in negligence, the facts must be pleaded and proven.

Accordingly, the defendant's violation of a legal duty of care that causes harm to the claimant is carelessness, which may be classified as a tort. [xcvii] Three requirements must be met in order for an aircraft claimant who based his case on the tort of negligence to prevail. A duty of care was due by the defendant to the claimant, the defendant broke the duty, and the plaintiff suffered harm as a result of the violation. The standard of a reasonable man is the relevant test to use when deciding whether there has been a breach of the duty of care. According to this interpretation, a reasonable man is someone with average intelligence who will exercise reasonable caution. [xcviii]

The reasonable foreseeability test serves as the yardstick for determining whether the defendant owes the claimant a duty of care. The law was established in the case *Donoghue v Stevenson*.[xcix] The 'neighbor principle,' which states that you should love your neighbour and, in law, that you should not harm your neighbour, was established enunciated in this case. In that case, the definition of a neighbor was stated to mean people who are so intimately and immediately impacted by the defendant's actions that the defendant should reasonably have them in mind when he devotes his thoughts to the actions or omissions that are under scrutiny. [c] It would seem that a contemporary norm has developed for determining the duty of care and is currently based on the foreseeability test as seen in the case of the *Donoghue v. Stevenson* case (*supra*). [ci]

As a result, in order to prove a case for negligence, the claimant must first plead and present evidence to show that a duty of care exists. See *Hi-Tech Construction Limited v. Patrick Onome*

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Onomuaborigho[cii] for more information on the requirement to plead and lead evidence to prove negligence. See also the following cases on the need for particulars of special damages to pleaded and proved, *Union Bank of Nigeria Plc v Alhaji Adams Ajabule & Anor,*[ciii] *Dr. Dalhatu Araf v Mr. v. Onyedin,*[civ] However, if the claimant cannot demonstrate special losses, the court may still award general damages as long as there is proof that the claimant has been injured. [cv] General damages are negligible in nature and may not adequately serve to address the pains or injuries suffered by the claimant

A third party who is suing for damages in aviation cannot do so without proving privity of contract because they are not a party to the air carriage contract as defined by Art. 17 of the Convention. Only that the defendant owed the claimant a duty of care and that the defendant's actions were in violation of that duty will be required to be proven[cvi]. In the aforementioned case, the Court of Appeal determined that a third party who suffers harm as a result of a transaction resulting from a contractual connection between two parties may only pursue a negligence claim without demonstrating privity of contract. The plaintiff must establish that the defendant owed him a duty of care and that the defendant's actions were in violation of that duty.

However, it would be difficult for a third party to succeed in a negligence claim where the cause of action stemmed from aviation or aircraft operation. This is so because the claimant in a negligence action must show that the defendant did not act with the degree of care that a reasonable, prudent person would have displayed in a comparable circumstance and that the defendant's actions fell below the legal standard intended to shield others from irrational risks of harm. [cvii] It is undeniable that it will be challenging for a third party claimant to demonstrate that an aircraft that crashed and injured him was operated below standard when neither he nor she was inside the aircraft or had any knowledge of the industry standard for operating an aircraft. This is due to the lack of widespread knowledge or proficiency in aircraft operations. Given the limitation in the law [cviii] that forbade the admission of the Accident Investigation Report (AIR) in court proceedings, the claimant's issue becomes even more challenging. The accident cause, which could have been most handy in proving carelessness, is usually determined by the accident investigation report (AIR) that is typically completed following an air disaster. Nigeria has continued to steadfastly adhere to the requirements of the CAA notwithstanding the Western Jurisdiction courts, from which the Aviation legal framework derives substantial paternity, have weakened the prohibition against the acceptance of the Accident Investigation Report (AIR). [cix] In this regard, the judicial attitude in English

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jurisdictions regarding the admissibility of the Accident Investigation Report, which permits same to be admitted in evidence as expert opinion,[cx] is highly recommended in the absence of any statutory intervention to comfort an injured third party, who must now resort to the tort of negligence.

CONCLUSION

It is imperative to address the glaring gap in Nigeria's legal system regarding compensation for third-party victims of an air tragedy. This paper has shown that there is no existing legislation that covers compensation for third parties who may sustain injuries in an aircraft accident. Additionally, we have seen that there are international laws intended to handle victims of third parties that are not applicable in Nigeria. the 1952 Rome-negotiated Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface and the 1973 Montreal Protocol amending the aforementioned Convention. If the gap is to be filled, Nigeria must either change her attitude about rejecting the Instruments or make a concerted effort to legislate the provisions into our domestic legal framework.

ENDNOTES

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[iii] B. A Garner, The Black's Law Dictionary (2014) 10. Ed, Thompson Reuters, West Publishing Co., Opperman Drive, United States p.905

[iv] Goddes and Grosset, The Complete English Language Companion (2007) ed. David Dale House, New Lanark, Scotland p.142

[v] A.S. Hornby, Oxford Learner's Dictionary of Current English (2018) Ed. Oxford University Press, Oxford, Uk p.33

[vi] Goddes and Grosset, op.cit. p.14.

[vii] A.B. Garner op. cit note 1 p. 342.

[viii] Ibid, 1798.

[ix] R. Alexander, 'Liability for in-flight Injuries'(2018) <https:llalexanderbno.com/blog/201812 liability-for-in-flight-injuries/>accessed 25 Sept. 2020.

[x] Convention for the Unification of Certain Rules Relating to International Carriage By Air, signed at Warsaw October, 20 1929, otherwise known as the Warsaw Convention. The Warsaw Convention was the first legal framework with far reaching and comprehensive provisions for injuries to victim of aircraft accidents and compensation of the victims. It was the first treaty to address the rights and liabilities of passengers and carriers. It had two primary goals which were to establish worldwide uniform laws for claims arising out of International aviation accidents and to limit the liability of the air carriers in order to protect them.< https://www.lexology.com >accessed 12 May, 202.1

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[xi] Article 1 Ibid.
[xii] I.H.Ph. Diedericks- Verschoor, An Introduction To Air Law (1993) 5th ed. Kluwer Law and Taxation Publisher Deventer, Boston p.57.
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[xiv] Air France v. Saks (Supra) at 405, Ayache v. Air France, 38 Rev. Franc. Dr. aerien 450, 451 (T.G.I Paris, 1st Ch. 1984.
[xv] 1 All E.R. 193 (British House of Lords (1997).
[xvi] Eastern Airlines, Inc. v. Floyd, 499 U.S 530, 552 (1991).
[xvii] 119 F. 3rd 152 (11th Cir. 1997).
[xviii] 739 F. 2nd 133 (3rd 1984).
[xix] This is a health condition that happens when the upper part of the stomach pushes through an opening in the diaphragm and up into the chest. <https://www.verywellhealth.com> accessed 12 May, 2021.
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[xxi] 124 sct 1221, 1224 (2004).
[54] Prescord v. Amr 383 F. 3rd 861 (9th Cir. 2004).
[xxiii] T.M.R Aoctearo, Air Safety Support International Ltd, a wholly owned subsidiary of Civil Aviation Authority <https://www.airsafety.aero> accessed 6 Nov. 2021.
[xxiv] An Agreement reached between the Airlines operating in the United States on the one hand, and the Civil Aeronautics Board. The Agreement was approved by Executive Order No. 23,680, 31 ed.
[xxv] Article 17 op. cit. Reg. 73002(1966), referred to as Montreal Agreement.
[xxvi] Article 25 provides that the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court seised of the case, considered to be equivalent to willful misconduct.
[xxvii] K.C. Grenis, 'Punitive Damages under the Warsaw Convention: Revisiting the Drafter's Intent' (1991) American University Law Review Vol. 41 ISS.1 14.2.
[xxviii] 872 F. 2d 1462 (11th Cir, 1989).
[xxix] 928 F. 2d 1267 (2nd Cir. 1991).
[xxx] 932 F.2nd 1474 (D.C. Cir. 1991).
[xxxi] Floyd (supra) at 1484-85.
[xxxii] Article 17 op.cit.
[xxxiii] 470 U.S 392 (1955).
[xxxiv] Saks v. Air France (supra) at 396.
[xxxv] Ibid, 405.
[xxxvi] 360 F. 3d 366, 401 (2d Cir. 2004).
[xxxvii] K.C Grems, op.cit p.145.
[xxxviii] M.G. Gebo, 'Embarking and Disembarking: The Parameters of the Warsaw Convention (1976) Comel International Law Journal Vol. 9 ISS. 2 P. 256.
[xxxix] 439 F. 2d 1402 (1st Cir, 1971).
[xl] Day v. Trans World Airline 528 F. 2d 31 (2nd Cir, 1975) where the Court asserted that Article 17 does not define the period of time before passenger enter the interior of the plane.
[xli] Envengelinos v. Trans World Airlines Inc. 396 F.
[xlii] 351 F. Supp. 702 (S. D.N.Y. 1972).
[xliii] C.L.Tomeny 'Compensation Under the Warsaw Convention for Victims of Hijacking and Terrorist Attacks' (1976) Brooklyn Journal of International Law, Vol. 3 ISS.1 p. 38 citing 2 Halsbury's Law of England Para. 1377 where the British authority stated that landing after a hijacking or a precautionary landing because of a bomb warning in a place not provided for in the contract of carriage, which does not result in an accident, does not give rise to a valid claim under article 17 of the Warsaw Convention even though it may be alleged that a nervous shock has been suffered.
[xliv] Ibid, 39.
[xlv] (Supra) note 29.
[xlvi] L. Washington, 'Maximizing Passenger Recovery Under the Warsaw Convention: Article 17 And 22' (1977) Washington and Lee Law Review Vol. 34 ISS.1 P. 149.
[xlvii] Such risks are cognizable at Common Law where the carrier owes to passengers a duty to exercise reasonable care to keep the station facilities at the airport safe. See Garrett v. American Airlines Inc; 332 F. 2d 939 (5th Cir. 1964) where it was held that an airline should be held to the highest degree of care during the entire passenger-carrier relationship including the time that the passenger spent on station premises.

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[xlviii] MacDonald v. Air Canada, 439 F. 2d 1402, 1405 (1st Cir. 1971).
[xlix] 396 F. Supp. 95 (W.D. Pa. 1975), rev'd, (1976) A.V.L. Rep. (CCH) (14 AV. Cas.) 17, 101 (3d. Cir. May 4, 1976).
[l] 439 F. 2d 1402 (1st Cir. 1971).
[li] 46 App. Div. 2d 679, 360 N.Y.S. 2d 60 (1974).
[lii] The court in Macdonald's case refused to state at what point the disembarkation process was completed, but indicated that the Warsaw Convention does not apply to passengers far removed from the operation of the aircraft. The court only stressed the passengers' location at the time of the accident rather than the activities of the passenger.
[liii] J.R. Lom, 'The Warsaw Convention – The Dilemma of the Disembarking Passenger Under Article 17 of the Warsaw Convention' (1977) Hernandez v. Air France, 545 F. 2d (1st Cir. 1976), Cert. denied, 430 U.S. 950. In that case, the Court of Appeal held that injuries suffered during a terrorist attack, incurred by airline passengers who were waiting for their baggage in the air terminal did not occur during the embarkation process. In denying the passenger's claim the Court reasoned that the location and activities of the passenger and whether those activities were under the control of the airline, were considered. The injuries were caused by terrorist attack to the passengers who had been cleared by immigration and proceeded to baggage claim area when the terrorists who had already received their bags withdrew automatic weapons and grenade from their bags and began to fire into the crowd, killing 25 people and wounding 72 others. In an action brought by the Hernandez and personal representatives of the deceased at the U.S District Court for the District of Puerto Rico, the Court dismissed the case on the ground that the attack did not occur in the process of disembarkation.
[liv] A High contracting party is a country that has ratified the Convention and not merely signed it Zee L.B. Goldhirsh, 'The Warsaw Convention annotated: A Legal Handbook 5 (1988) Air and Space Law 149.
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[lviii] J.P. Bonlee, 'Recovery for Mental Injuries That are Accompanied by Physical Injuries Under Article 17 of the Warsaw Convention: The Progeny of Eastern Airline, Inc. v. Floyd, 24 Ga. J. Int'l and Comp. L. 501 (1995) <www.mcgill.ca>lasl>item> accessed 21 October, 2020
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[lx] P.S. Demsey op. cit. p 20.
[lxi] Morris v. KLM (2002) UKHC 7, (2002) 2 AC. 628 (UK House of Lords 2002).
[lxii] L. Washington, O.P cite Note 32 P. 141.
[lxiii] Article 17 of the Convention for the Unification of certain Rules Relating to Int. carriage by Air, Signed at Warsaw, October 1929.
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[lxv] Article 20 op.cit
[lxvi] C.E. Uwakwe, Introduction to Civil Aviation Law in Nigeria (2006) 1st ed. (Aviation Publishing and Consultancy Co. Ltd, Lagos, Nigeria) p. 145.
[lxvii] Uwakwe Ibid
[lxviii] Article 25(1) of the Warsaw Convention.
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[lxxviii] (2019) 9 NWLR (PT. 1677) 191.
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[lxxxii] Convention on Damage caused by Foreign Aircrafts to Third parties on the Surface, 1952.
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[xc] S.49(2) of the Civil Aviation Act provides that a claim for damages can lie where injury, loss or damage is caused to any person or property on land or water by an aircraft or a person in or falling from an aircraft while taking off or landing.
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[xcii] G. Kodilinye, The Nigerian Law of Torts (1982) 1st ed.,Spectrum Law Publishing, Ibadan Nigeria p.38
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[xciv] (1934) A.C p.25.
[xcv] (2012) ALL FWLR (PT 700) 1240 at 1243 Ratio 3..
[xcvi] Diamond Bank Ltd. v Mocokonu Nigeria Ltd. (2019) ALL FWLR (1001) 718 AT 725 RATIO 10.
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