



The Legal Responsibility of the Air Carrier for the Damages Caused by Terrorist Operations

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Abstract

Global security in general witnessed serious threats after the end of the world wars, as it entered a dark tunnel called the Cold War. The traditional armed conflicts are no longer the only threats to this security, but what is more dangerous and dangerous appeared on the scene, such as terrorism in its various forms and forms, and this has helped. The spread of sectarian and ethnic conflicts on the one hand, and the proliferation of weapons of mass destruction on the other. Terrorist activities have found paralyzing and threatening air traffic movement (the events of September 11th), considering that the regularity and safety of this navigation is a matter of national security for all countries of the world, as it is the means of communication for any country and the first tributary of its international trade. The study aims to determine the civil liability of the air carrier for damages resulting from terrorist incidents, and the legal consequences of those accidents in the field of air transport. It relied on the descriptive approach to study the problematic extent to which the air carrier can be held accountable for terrorist incidents that occur during the air transport process, based on what was decided by international conventions, and what was settled in international judicial rulings regarding cases of compensation for those affected by terrorist incidents in the field of air transport. The study reached several results, the most important of which is that the

responsibility of the air carrier regarding terrorist incidents in the event of his failure to take the necessary measures to prevent terrorist incidents and after the occurrence of those terrorist incidents. It also presented a set of recommendations that the researcher believes are necessary to ensure the responsibility of the air carrier for the damages resulting from terrorist incidents.

Key words

air transport, civil liability, terrorism.

Introduction

The responsibility of the air carrier is one of the most important topics in air law that has attracted the attention of legislation, both at the international level and at the local level. Such legislation hastened to ensure the safety of air navigation, especially after the development of air transport means and the increase in the number of airlines, which Making it vulnerable to terrorist attacks, whether through hijacking planes, or carrying out acts of sabotage that lead to the destruction of planes in flight, leaving a large number of innocent victims on board those planes. The international community has witnessed many terrorist operations that targeted the safety of air transportation (Sheffi, 2001), whether inside the airport building, or on board aircraft during flight. Political or economic demands or financial gains that you want to obtain from some countries(De Neufville et al., 2013). Terrorism has become one of the realities of the modern era. No country is spared from this danger. The term political and legal terrorism has been occupied since the eighteenth century, in relation to the system of intimidation and the era of terror that the French Revolution knew during the reign of Robert, as was attributed to Bismarck for his use of the army(Enders & Sandler, 2011). As a means of collective control in Russia, it was also attributed to the horror that the Nazi rule provoked in Europe at the same time. However, terrorism is a social phenomenon as old as humanity, since God Almighty created man and we see that crime is common among individuals of different religions, colours, ages and civilizations. Moreover, the definition of terrorism is one of the biggest obstacles facing the international community(Ali & Alzugbi, 2016).

The concept of international terrorism

Although terrorism is one of the most dangerous phenomena that threaten individuals and peoples, the international community was unable to reach a unified definition of it. The relevant UN Security Council resolutions have appeared and they contain general expressions that do not reflect the existence of a unified vision for this term), which indicates the inability of the UN Security Council to reach the adoption of a unified concept of terrorism in order to mobilize various international efforts to confront it, especially since terrorism affects many of its effects. States, and then unifying concepts will lead to standardizing procedures for dealing with it

(Busher, 2014). The inability of the international community to reach a unified definition of terrorism is due to several reasons (Richards, 2014), the most important of which are:

- 1) Each country seeks to define terrorism in a way that serves its own interests, even if this is not compatible with The nature of terrorism, some countries view acts of resistance to foreign occupation as self-defense, while other countries consider it terrorism, which led to a multiplicity and diversity of definitions according to what achieves each country's interests.
- 2) There is a difference about the extent to which the perpetrator of the terrorist act requires a special intent, as some believe that what distinguishes terrorism is that it is committed with the intent of achieving Political, not criminal, goals, while others do not see the requirement that the perpetrator of terrorism have a politician.
- 3) The multiplicity and diversity of the reasons for perpetrating terrorist attacks (religious, political and economic), especially after the end of the Second World War, which caused the existence of the so-called state terrorism, terrorism of the individual, and made terrorist operations not only committed by individuals, but also by states. When the United Nations Committee on International Terrorism prepared a draft unified convention on legal procedures against international terrorism in 1980, it defined it as: "An act of serious violence or threat of violence, committed by an individual – equal to alone or in association with others – against persons or Organisations, places, or means of transport and communications, or against the general public to threaten, injure or kill them, with the intent of undermining friendly relations between nationals of different countries (Bassiouni, 1988).

In its recommendation No. 1426, the Parliamentary Committee of the European Parliament adopted the definition of terrorism as: "a crime committed by an individual or group against the state, its institutions, residents, or specific individuals motivated by separatist goals or extremist and fanatical ideology in order to cause a state of terror or intimidation among individuals society (Conte, 2010). The General Assembly of the United Nations sought to define terrorism and was keen to take into account the various considerations affecting its definition, as it defined it as: "criminal acts intended to spread a state of terror among the masses of people or a specific group of persons for political purposes, whatever the justifications behind them. committing these acts" (Whittaker, 2012).

The Legal System of Air Carrier Liability

Undoubtedly, determining liability for compensation for the damages of international terrorism has a great impact in reducing the seriousness of the effects of such accidents, which entails providing fair compensation to the injured or the relatives of the victims, and guarantees them reparation for the material and psychological damage they suffered. Which is not only in the interest of the victims

only, but is considered an achievement of the principles of international justice and a deterrent against all terrorist operations that target the stability of the international community. International responsibility constitutes an important space in the international legal system, where international responsibility can be defined as: The international person must repair the damage for the benefit of the victim of an act or omission that caused the harm, or bear the penalty for this violation (Boyle, 2005). The Dictionary of International Law Terminology defines international responsibility as: "the obligation of the state to which it is attributed to commit an act or omission in contravention of its international obligations to provide compensation to the aggrieved state or in the person or money of its nationals"(Crawford & Olleson, 2003). The draft of the International Law Commission on International Responsibility defined it as: "Every internationally wrongful act issued by a state that entails its responsibility. International jurisprudence differed in determining the legal basis for international responsibility, so the traditional theory held that the error or wrongful act is the basis of international responsibility, while the modern theory relied on the theory of risk as a basis for international responsibility (Nollkaemper, 2007).

Responsibility of the air carrier for terrorist incidents

For the obligation of the air carrier to compensate the passenger or cargo owner for the damages he sustains in accordance with the 1999 Montreal Convention, we must be in the process of air transportation subject to this Convention, which is international air transportation, and the damage must be caused by an accident related to the transportation process. And that the accident occurred during air transport operations.

The legal basis for the liability of the air carrier for terrorist incidents

Although the international conventions on air transport accidents have reduced the role of error as a basis for the responsibility of the carrier, the theory of error as a basis for the liability of the air carrier has witnessed a great development, especially in terrorist accidents (Jansson, 2007), which. On the interest of many judicial rulings in compensation cases for terrorist incidents, in order to miss the opportunity for the carrier to deny his responsibility just to prove that there was no fault on his part or on one of his subordinates, and this basis is due to the emergence of strong trends calling for the necessity of expanding the scope of the carrier's liability cases for what these causes. Accidents result in serious damage, which enhances the provision of protection for the injured who is difficult to prove the carrier's fault, and it is also impossible for him to prosecute the perpetrators of the terrorist act as a result of bodily injury, provided that the accident that caused the death or injury occurred on board the aircraft or during any of the operations of boarding or disembarking passengers, and Article (47)

prohibits every condition aimed at relieving the carrier of its responsibility or setting a minimum limit determined by it. It seems to us that what is meant by the accident for which the air carrier is responsible is the one that is related to the carrier's activity, so there is no room for the carrier to blame the accidents originally related to the air transportation process with all its stages mentioned in the text of Article (17) of the Montreal Convention, which indicates that the carrier's responsibility applies only to Accidents caused by air transportation. For our part, we agree with this definition, so that the incident causing harm to the passengers is related to the air transport process, even if the damage was caused by a foreign cause, such as incidents of piracy and terrorism that occur on the airport building or on the plane itself. In this opinion, we rely on the obligations entrusted to the air carrier towards the passenger from the beginning of his being subject to the control and supervision of the carrier until the end of his arrival to a safe place in the building of the arrival airport. air. This interpretation has echoed in many court rulings. In the case of Ms. Husserl (Evans, 1976), the court considered the process of hijacking and diverting the plane as an accident for which the air carrier is asked, although it is not related in principle to the process of aerial exploitation of the aircraft, but it is related to the activity of the carrier. The US Supreme Court also ruled in the case of Ricci, whose facts are summarized in the fact that the plaintiff had been assaulted by a passenger next to him during the flight, causing him severe damage, and when the matter was presented to the New York Court of Appeals, it ruled that this incident is an air accident , although it is not originally related to the aerial exploitation process (Smith & Boardman, 2007).

It is useful to note that the risks of air transport, especially the risks of terrorism are no longer limited to the risks that occur on board the aircraft, but rather extended to places inside the airport, such as places designated for waiting or inspection sites, which means that the danger to the safety of passengers extends, and this does not mean for us Deciding the carrier's absolute liability for accidents that occur to the passenger at all airport locations. Rather, the carrier's responsibility is limited to accidents that occur in places where the passenger is subject to the control and supervision of the air carrier.

We believe that what has been established by international conventions and the judicial courts have decided the responsibility of the air carrier for all accidents related to the air transport process reflects beyond any doubt that the error of the air carrier is fit to be a reason for accountability for the damages caused to the passengers as a result of the occurrence of terrorist incidents, And that the idea of a foreign cause is no longer acceptable to rely on to pay civil liability, as its responsibility is not to take the necessary measures to secure the safety of passengers, especially after the recurrence of terrorist incidents in the field of air transport, which requires the carrier to anticipate their occurrence and work to avoid them by taking security measures to prevent their occurrence during Air transportation process.

Thus, we find that the breadth of the concept adopted by national laws and

international conventions, and what the judicial courts decided (Bassiouni, 1999), for the air accident indicates beyond any doubt that the air accident is every incident that disrupts the normal course of the air transport process, regardless of whether the accident is linked to the exploitation of the aircraft or a mistake. The carrier or its subordinates. The progress witnessed in the field of air transportation makes accidents in the air transportation process possible, and the mere harm to the passenger is sufficient to determine the civil liability of the air carrier, and this expanded concept would consider terrorism as an air accident.

Compensation for damages of terrorism in the field of air transport

It is well known that civil liability is either personal liability based on fault, whether the fault is presumed or an error that must be proven, or objective liability based on the occurrence of the damage without the need to prove the fault of the air carrier. Given the nature of terrorist incidents and the severity of the damages resulting from them, the Montreal Convention 1999 went to combine the two types of responsibility to strike a balance between the interests of both the carrier and the passenger. The Warsaw Convention, before it, adhered to the idea of error as a basis for liability, and linked the possibility of his insistence on determining his responsibility for compensating damages to passengers, whether his mistake was a voluntary mistake or mere negligence on the part of the air carrier.

In the 1999 Montreal Convention, the framers of the 1999 Montreal Convention neglected the distinction between negligence and voluntary error in the carrier's field of responsibility, although legal logic requires observing this distinction, so that the responsibility of the carrier who committed a voluntary error differs from the responsibility of the negligent or negligent, but although the Convention has neglected this matter, This does not prevent it from being remedied by the judiciary when considering compensation claims resulting from terrorist incidents. From our side, we see that not every violation of safety rules in the field of air transport can be achieved with the voluntary error of the carrier. The reason for the voluntary error is a deviation in the behavior of the carrier that calls for stricter responsibility and obligating him to pay full compensation, as long as this behavior is a direct cause of the accident (Cassese, 2005).

It calls for aggravating his responsibility and obligating him to pay full compensation, as long as this behavior is a direct cause of the accident. In this regard, we must point out that the carrier, who became aware of the possibility of a terrorist act on his flight, must inform the passengers of this danger before the start of the flight, regardless of taking the necessary measures to avoid this terrorist act. Perhaps one of the most famous cases that dealt with this issue is the Lockerbie case), the facts of which are summarized in the fact that one of the planes belonging to the "Pan American" company exploded while flying over (Cassese, 2005).

It is worth noting that the true criterion for the carrier's liability for damages from terrorist incidents is the involuntary error of the carrier regarding these

accidents, which is the carrier's failure to observe the due diligence during the implementation of his obligations without intending to harm, or not realizing the possibility of damage that could have been avoided if Carrier used reasonable care. It seems important to point out that the fault of the carrier in terrorist incidents is perceived even after the accident, through his failure to deal with the serious consequences resulting from this accident, as if the terrorist attack had resulted in a fire on the plane, and the carrier did not confront the source. The fire with the necessary extinguishing means and tools, which caused the double effects of the terrorist incident.

Conclusion

The study focused on the most important issues raised by the field of international air transport, which is the extent to which the carrier guarantees the damages of terrorist incidents to passengers during the air transport process. Terrorism, which necessitates strictness in the carrier's responsibility to push him to take special measures to protect passengers from serious damages that may be inflicted on them as a result of terrorist air accidents. It is undoubtedly correct to say that the air carrier is primarily responsible for ensuring the safety of all stages of the air transport process, and is also responsible for compensating the damages arising from terrorist incidents, with the aim of reducing the danger of terrorism damage, and to ensure reparation for the damage in light of the difficulty of bringing the perpetrators of terrorist incidents to the courts.

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