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Summary

The Warsaw Convention was primarily written with the two main legal systems that is common law and civil law in mind. Since the transport industry was then operating and growing mostly in European States, it was justifiable to tackle the issue of liability according to their legal systems. However, the period after the Second World War witnessed the emergence of new States, some of whose legal systems differ from the two prevailing systems. A large part of these new States had been Islamic States, mostly situated in the Middle East and North Africa and some in South East Asia. On the one hand, there is an increasing trend in Islamic States to apply Islamic law. On the other hand international air transport operations are fast growing in these States. Based on these two facts, if the Islamic states insist on implementing certain principles such as principles of compensation for death or bodily injury according to the *Shariah*, there would be a conflict between these principles and those of the international system of air carrier's liability. Consequently this conflict weakens the uniformity of the international regulation. Therefore, it is necessary to study the principles of liability in Islamic law and Islamic States in order to clarify their similarities and differences with the international system to help achieve the uniformity of international rules in the future.

The majority of Islamic States had been under the influence of civil law or common law and Islamic law. The legal system of Iran, for example, has been influenced by civil law and Islamic law.

The Iranian legal system is therefore a mixture of the two and their respective degrees of influence differ from one area of law to another. For instance, whilst liability for death or bodily injury follows the *Shariah*; obligation and trade law are under the influence of civil law. The basis of legal liability and compensation in Islamic law are partly different from the principles of civil law and common law. So, Islamic law differs from international instruments of air carrier's liability.

Iran ratified and gave effect to the Warsaw Convention 1929, The Hague Protocol 1955, and the Guadalajara Protocol 1961 for international flights in 1975. According to the Act 1985 entitled 'Determining the Scope of Liability of Iranian Air Carriers on Domestic Flights' in air transport accidents of domestic flights, Iran applies the provisions of limited liability in the Warsaw Convention as amended at the Hague in 1955.

This difference between the *Shariah* and the international system is crystallized when the provisions of the Warsaw, and later Montreal Conventions and those of Islamic law were simultaneously applied to domestic flights in Iran. This would be particularly relevant where there is a gap between the *Diyah* in the *Shariah* regulations and liability limits under the international system, thus causing a huge difference in the compensation levels. Therefore in order to unify liability rules at the international level, it is necessary to pay due attention to the Islamic legal system for which the most important concept is the *Diyah*.

Can the *Shariah*, like common law and civil law systems, compromise some of its regulations so as to enable a harmonious and fruitful coexistence with the international system? The main purpose of the current study is to explore the hypothesis that although Islamic law has its independent principles of liability, Islamic States can adopt international air carrier's liability in international flights and allow the two systems to coexist in domestic flights, irrespective

of the fact that such States have not been active in the drafting of most of these regulations. In so doing, the work focuses mainly on the legal system of Iran.

To answer this question and verify the hypothesis, the author provides five chapters. This thesis consists of five chapters. After presenting a general introduction to possibilities and challenges of uniformity of international regulations on air carrier's liability, in addition to the aim of study and methodology in Chapter 1, Chapter 2 discusses the prevailing legal systems that are the common law and civil law that have affected the Warsaw system. A close study of the principles underlying legal liability in these two systems would lead to an appreciation of their similarities and differences. This would in turn be very useful in gaining a better understanding of air carrier's liability in private international law especially since international commentators desired to use the rules of liability of the two systems in the new Convention to make it more comprehensive so as to achieve more uniformity. Further, an analysis of these two systems provides an important insight into the reasons for the collapse of the Warsaw System. It also helps make clear that in order to achieve uniformity within the framework of the Warsaw Convention, States adopted principles such as liability limitation, invalid contractual conditions, or the presumption of fault for death or bodily injuries which had no precedence in either of their pertinent legal systems.

Chapter 3 investigates the legal liability under the *Shariah* and Iranian law. The *Shariah* provides sufficient principles that make it a self-contained and independent system. The most important subject related to this study will be the *Diyah* as a legal principle and compensation for death or bodily injury. Chapter 3 also deals with air transport regulations in Iran. To comprehend the air carrier's liability system in Iran, one should understand the State's legal system and its legislators. *Shariah* principles were codified by the Islamic legislature due to

the demands of technological developments and the conditions of the Iranian society. The Iranian Parliament is not the only legislative body. Authorities such as the Guardian Council of the Constitution play important roles in codifying laws and regulations and their conformity with the *Shariah*.

The laws and regulations on air carrier liability in Iran are complex. When studying air carrier liability in Iran, attention should be paid to the principles of liability in the Civil Code, Commercial Code and Islamic Criminal Code, as well as applicable treaties as implemented in domestic law, and specific statutes. For passenger's death or bodily injury, in addition to the general rules of the Civil Code and the Commercial Code, as well as the Specific Act 1985 implementing the provisions of limited liability in the Warsaw-Hague Convention in Iranian law, one should refer to the Islamic Criminal Code. This Code, which follows the *Shariah*, provides special provisions for civil liability as well as criminal liability.

The most important issue in this Code is the determination of liability limits for death and bodily injury, which is in contradiction with the limited liability and unlimited liability for death and bodily injury in the Warsaw-Hague regime. Hence, the principles of liability for death or bodily injury in the Warsaw-Hague Convention and the *Shariah* collide in Iranian law. The wide gap between the *Diyah* and liability limits under this system causes a huge difference in the compensation levels for domestic and international flights. Familiarity with these principles is essential for comparing the principles of liability in the *Shariah* with air carrier's liability in international instruments in Chapter 4.

Chapter 4 deals with the general principles of liability that govern air carrier's liability in international instruments. There, the author analyses these principles and compares them with the *Shariah* principles. The Chapter 4 argues and demonstrates that the principles of air

carrier's liability in international treaties are neither static nor completely dependent on the common law and civil law systems. It is a dynamic system that continuously evolves. Therefore, States with diverse legal systems including common law, civil law and Islamic law, can adapt themselves to the principles of the international system. Chapter 4 explains that there are issues in the international system of air carrier's liability that are designed flexibly, so that States with different legal systems may investigate legal cases according to the principles of their respective legal systems.

Chapter 4 also deals with air carrier's liability for death or bodily injury in domestic flights, which operate under the influence of the *Shariah* and the Warsaw system. In addition to the Act 1985, the liability of air carriers for passenger's death or bodily injury is determined by the *Diyah* in the Islamic Criminal Code which places a special limitation on liability. As a result, there is a conflict between the *Diyah* and the compensation scheme under the Warsaw-Hague Convention for passenger's death or bodily injury (whereby limitation of liability was prescribed in Article 22 and unlimited liability in Article 25).

There is no judicial consensus with regard to liability for death or bodily injury in domestic flights. The Guardian Council of the Constitution in its interpretive opinion declared that the *Diyah* regulations should be applied to all Iranian citizens. Thus compensation should be meted out according to the *Diyah* regulations for Iranian air passenger's death or bodily injury in domestic flights. Courts have made different decisions based on this interpretive opinion. Some have accepted it and awarded compensation according to the *Diyah*, while others have focused their judgments on the Act 1985 which considers the Warsaw-Hague Convention enforced and ruled according to its Article 22. The author claims that regulations of the Warsaw-Hague Convention and the *Diyah* can be simultaneously applied to domestic

flights. Conflicting cases can be resolved through the application of contractual conditions, the *la zarar* principle, or the ratification of a specific statute.

Chapter 5 provides a general conclusion. It addresses the question of whether Islamic States, whose independent liability principles for death or bodily injury differ from those of the common law and civil law, are in a position to adopt the international system of air carrier's liability. Drawing on the discussion in previous Chapters, this Chapter concludes by highlighting that the *Shariah* is indeed consistent and able to co-exist with the liability principles of the Warsaw-Montreal regime. Also, Iran may adopt the Montreal Convention 1999. Any probable conflict between the provisions of this Convention and the *Shariah* can be resolved through the application of a specific statute by the Parliament.